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No. 93-225

IN THE
SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1993

ST. GEORGE "DIXIE" LODGE #1743,
BENEVOLENT & PROTECTIVE ORDER OF ELKS,
Petitioner

v.

SANDRA BEYNON, *Respondent*

Petition for Writ of Certiorari to the
Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

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319 pp

QUESTION PRESENTED

Does the Utah Civil Rights Act, as interpreted by the Utah Supreme Court, unconstitutionally infringe upon First Amendment associational rights by forcing members of the Elks Lodge to accept women as full members into their benevolent, fraternal order?

PARTIES

The parties are all identified in the caption of this petition. Petitioner, a corporation, is a local chapter of the Benevolent and Protective Order of Elks of the United States of America (B.P.O.E.). Petitioner received a charter from the B.P.O.E. to operate a local subordinate lodge in St. George, Utah. Petitioner has no subsidiaries.

Inasmuch as this appeal challenges the constitutionality of the Utah Civil Rights Act, as applied by the Utah Supreme Court, the provisions of 28 U.S.C.A. § 2403(b) may apply, pursuant to which the Utah Attorney General may attempt to intervene in this matter. The Attorney General did file an amicus curiae brief in the Utah Supreme Court,

as did the Conference of Private Organizations (CONPOR).

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Petition for Writ of Certiorari to the
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OPINIONS BELOW

The Fifth Judicial District Court for the State of Utah granted this petitioner's motion for summary judgment and denied respondent's counter-motion

for summary judgment in a memorandum decision dated November 4, 1991. The decision was not published, but is reproduced on pages 50-56 of the appendix. Judgment was entered by the court on December 3, 1991, a copy of which is found on pages 57-59 of the appendix.

The Utah Supreme Court reversed the trial court in a written opinion dated April 14, 1993. (Appendix, pp. 25 to 49). An amended version of this same opinion was issued on May 14, 1993, which amended opinion superseded the Utah Supreme Court's original opinion. The amended opinion has not yet been published in the Pacific Reporter or in the Utah Reports, but a copy of the amended opinion is reproduced on pages 1 through 24 of the appendix.

On May 13, 1993, the Utah Supreme Court entered an order denying petitioner's timely petition for rehearing, a copy of which is found on page 60 of the appendix.

JURISDICTION

The original opinion of the Utah Supreme Court was issued on April 14, 1993. An amended version of the opinion was issued on May 14, 1993. An order denying petitioner's timely request for rehearing was entered on May 13, 1993.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional provisions:

U.S. Const. amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the

> free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. XIV, § 1:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The following statutes are involved in this case, the text of which is set forth in the appendix, pages 61 through 117:

> The Utah Civil Rights Act, Utah Code Ann. § 13-7-1 et seq., as amended;
>
> The Alcoholic Beverage Control Act, Utah Code Ann. § 32A-5-101 et seq., as amended.

STATEMENT OF THE CASE

Petitioner St. George-Dixie Lodge #1743 (hereinafter "Elks Lodge") is a local chapter of the Benevolent and Protective Order of Elks (B.P.O.E.). The B.P.O.E. is a fraternal organization that has existed throughout the United States for more than 125 years. The B.P.O.E. and its local lodges provide millions of dollars worth of charitable services to local communities throughout the United States. The B.P.O.E. has a long and honorable tradition of encouraging patriotism, community responsibility, and acts of charitable service. As with all fraternities, only males are permitted to become members of the B.P.O.E. and its local lodges.

The central activity of the Elks Lodge is a weekly ritual meeting held on

Tuesday nights. Only members of the Lodge are allowed to attend the ritual meeting. No one else, not even family members or guests, are allowed to attend. This rule is strictly enforced.

At the weekly meeting Lodge members perform extensive rituals and ceremonies that are religious in nature. The text of these rituals is contained in a booklet entitled, "Ritual of the Subordinate Lodges." The booklet contains 76 pages of ritual, nearly all of which must be memorized and repeated verbatim at appropriate times in the Lodge ritual meetings. No food or beverage, including liquor, is served in the ritual meetings, nor are Lodge members permitted to bring food or beverage into the ritual room. Rather,

all types of food and beverage are strictly barred.

The Elks Lodge operates a restaurant and a bar for the benefit of its members. Access to the restaurant and bar is limited to Lodge members, their immediate family, and their guests. In order to operate the restaurant and bar the Elks Lodge obtained a state liquor license and a business license, as required by statute.

On August 7, 1987, plaintiff Sandra Beynon, a female, applied for membership in the Elks Lodge. Plaintiff's application was rejected because, as a fraternal organization, membership in the Lodge is restricted to males. Prior to applying for membership plaintiff possessed a family card, which granted

plaintiff access to all of the Lodge's facilities, but did not allow her to access the Tuesday night ritual meeting.

When plaintiff's membership application was denied, plaintiff filed suit against the Elks Lodge, claiming that the Lodge violated the Utah Civil Rights Act (UCRA) found in Utah Code Ann. § 13-7-1 et seq. The UCRA prohibits gender discrimination in business establishments, places of public accommodation, and in enterprises regulated by the state. Plaintiff's complaint asked for an injunction ordering the Elks Lodge "to cease all gender-based discrimination." (Complaint, p. 10). Both plaintiff and defendant eventually filed counter-motions for summary judgment. In its summary judgment motion, the Elks Lodge

presented two different arguments: (1) The Elks Lodge does not fall within the scope of the Utah Civil Rights Act; and (2) "enforcement of the Utah Civil Rights Act against the Lodge would violate the right of Lodge members to free association guaranteed under the First Amendment." (Argument heading, Memorandum in Support of Elks' Motion for Summary Judgment, p. 40, attached hereto at p. 118 of the appendix). Plaintiff's motion for summary judgment presented the opposing arguments.

In support of its motion for summary judgment the Elks Lodge asserted and properly supported a number of facts, all of which must be accepted as true in order to grant summary judgment in plaintiff's favor. Plaintiff stipulated to most of these facts in

order to obtain a ruling on the summary judgment motions. Some of the facts asserted by the Lodge are as follows:

1. The Lodge is an organization that has selective criteria for its membership and is not open to the general public.

2. Membership in the Lodge requires that one:

a. be a male American Citizen;

b. be 21 years of age or older;

c. have a belief in God;

d. have never committed a crime;

e. be a non-Communist;

f. be sponsored by at least two members of the Lodge who are in good standing;

g. be willing to swear to uphold the Constitution and laws of

the United States of America and the bylaws of the Lodge;

h. be willing to pledge allegiance to the United States and salute the flag;

i. be of good character;

j. promote fellowship amongst members of the defendant organization.

3. In addition to the membership requirements stated above, an applicant to the Lodge must also be screened by an investigative committee. If the person passes the screening process, the person's application is then submitted to the entire Lodge membership for a vote.

4. The Lodge is a private, fraternal club not open to the general public.

5. The Lodge does not sell beer or liquor to the general public, nor does it offer its services and activities to the general public, but only to its members and their guests.

6. The Lodge does not engage in business for profit.

7. The Tuesday night ritual meeting is the central activity of the Lodge.

8. Lodge members are strictly prohibited from using their membership to further any business pursuit or to gain any business advantage.

9. The Elks Lodge does not advertise for new memberships.

Based upon plaintiff's stipulations, the trial court concluded that the Elks Lodge was not a "business" and thus was not governed by the UCRA.

Because the trial court found that the UCRA did not apply to the Elks Lodge, it was unnecessary for the trial court to rule on the constitutionality of the UCRA, which had been presented as an alternative argument.

Plaintiff appealed the trial court's decision to the Utah Supreme Court. Prior to actual briefing, plaintiff moved for summary reversal. This motion was denied.

On appeal the same issues were presented to the Utah Supreme Court that were previously presented to the trial court. Plaintiff argued that the trial court erred in concluding that the Elks Lodge was not governed by the UCRA and further argued that the UCRA does not unconstitutionally infringe upon the First Amendment rights of Elks Lodge

members. Plaintiff's brief stated this second issue as follows:

> Does the compelling state interest in eradicating invidious discrimination outweigh any constitutional right of Elks Lodge members to associate freely?

Plaintiff's Brief, p. 3.

The appeal brief of the Elks Lodge stated the same two issues:

> 1. Did the trial court correctly conclude that the Elks Lodge does not fall within the scope of the Utah Civil Rights Act?
>
> 2. If the Elks Lodge does fall within the scope of the Utah Civil Rights Act, does the act violate the constitutional right of free association guaranteed to Lodge members under the United States and Utah Constitutions?

Appendix, p. 119, Issue Statement from Elks Appeal Brief.

In rendering its opinion, the Utah Supreme Court first concluded that the Elks Lodge is subject to the UCRA, thereby reversing the trial court's opinion on this point:

> Harmonizing the legislative intent and the provisions of the [Utah Civil Rights] Act in this case leads to the inescapable conclusion that the Elks is subject to its terms.

Appendix, p. 42-43.

Because the court concluded that the UCRA is applicable to the Elks Lodge, the court was obligated to decide whether the Act is unconstitutional under the First Amendment. However, although the Utah Supreme Court acknowledged that the Elks Lodge had raised the First Amendment issue, the court refused to address the issue, declaring that there was no right of

free association implicated in this case:

> The Elks claims that application of the Act violates its right to free association under the First and Fourteenth Amendments to the United States Constitution and Article I, § 1 of the Utah Constitution. We do not reach this issue because this case does not implicate the right to free association.

Appendix, p. 43. (emphasis added).

The court attempted to support its holding by declaring that the members of the Elks Lodge had somehow waived their constitutional right to free association by belonging to an entity possessing a state liquor license:

> Under the [Alcoholic Beverage Control Act (ABCA)], any entity seeking a private club liquor license must submit itself to the intense regulation imposed by the state legislature. One of the many requirements under the ABCA is that licensees must not violate any law or

ordinance. The Elks voluntarily elected to abide by the laws of Utah, including the Act, when it applied for and received a private club liquor license.

* * *

As long as the Elks maintains its liquor license, it may not discriminate. Our decision does not impinge on the Elks' right to free association; it merely precludes the Elks from using a state liquor license in a discriminatory fashion.

* * *

In short, the Elks may not discriminate on the basis of gender as long as it accepts the benefits of a state-issued liquor license.

* * *

We need not determine whether Elks' activities should be constitutionally protected because the Elks is free to relinquish its liquor license.

* * *

As long as the Elks holds a private club liquor license, it must comply with the anti-

> discrimination provisions of the Act.

Appendix, pp. 43 through 46.

Based upon this rationale, the Utah Supreme Court ordered the trial court to enter judgment in favor of plaintiff. The Elks Lodge submitted a timely petition for rehearing, but the petition was denied on May 13, 1993. (Appendix, p. 60). One day later the court filed an amended opinion that superseded its previous written opinion. (Appendix, pp. 1 through 24). The amended opinion made no significant changes, but simply corrected a misstatement that had been made regarding the history of the Alcoholic Beverage Control Act. (Compare footnote 9 of April 14 opinion (Appendix pp. 32-33) with footnote 9 of May 14 amended opinion (Appendix p. 8)).

In light of the Utah Supreme Court's complete disregard of the Lodge members' fundamental right of free association, the Elks Lodge has submitted this petition for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD GRANT THIS PETITION TO DECIDE WHETHER MEMBERS OF BENEVOLENT FRATERNAL AND SORORAL ORDERS ARE ENTITLED TO FIRST AMENDMENT PROTECTION, A QUESTION OF GREAT IMPORTANCE HERETOFORE UNDECIDED BY THIS COURT.

The Elks Lodge is a local chapter of the Benevolent and Protective Order of Elks, a 125-year-old fraternal organization with a long and honorable tradition of promoting patriotism, good character, and charitable works. As in all fraternities and sororities, membership in the Elks Lodge is restricted by gender. The Utah Supreme Court recently

interpreted the Utah Civil Rights Act (UCRA) to prohibit the Elks Lodge from limiting its membership to males, thus destroying the fraternal status of the Lodge that has existed for 125 years. The court granted plaintiff the relief she sought, which was an injunction ordering the Elks Lodge "to immediately comply with the provisions of the Utah Civil Rights Act . . . and to cease all gender-based discrimination. . . ." (Complaint, p. 10).

In spite of the fact that the Utah Supreme Court's decision destroys the fraternal status of the Elks Lodge and forces plaintiff's association upon Lodge members, the court nonetheless refused to consider the merits of the Elks' First Amendment argument. Incredibly, the court simply declared

that "We do not reach [the First Amendment] issue because this case does not implicate the right to free association." (Appendix, p. 19). The court did not balance the state's interest in regulation against the Lodge member's right to free association, which is the constitutional framework adopted by this Court for resolving First Amendment issues. Instead the court applied its own unique analysis, declaring that, because the Elks Lodge possesses a state liquor license, the Lodge members somehow waived their constitutional rights. Not surprisingly, the court was unable to cite a single authority on this point.

The Utah Supreme Court's conclusion that the UCRA "does not impinge on the Elks' right to free association" is

erroneous on its face. The UCRA, as interpreted by the Utah Supreme Court, prohibits the Elks Lodge from limiting its membership to males and forces plaintiff's association upon Lodge members. The Act thus destroys the fraternal order upon which the Lodge was founded 125 years ago and prevents the Elks from selecting their own membership. As this Court has recognized, "There can be no clearer example of an intrusion into the internal structures or affairs of an association than a regulation that forces the group to accept members it does not desire." Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984). Quite obviously the Act restricts the right of Lodge members to associate freely, a right

guaranteed to Lodge members by the First Amendment.

A. **The First Amendment Protects the Right of All Citizens to Freely Associate Without Unreasonable Government Interference.**

The right of the people to peaceably assemble free from government intrusion existed long before the adoption of the Constitution. U.S. v. Cruikshank, 92 U.S. 542 (1875). This fundamental right was forever guaranteed to the citizens of this country by the adoption of the First Amendment, which declares that "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble. . . ." U.S. Const. amend. I. This amendment restricts the ability of the government to pass legislation abridging the peoples' right to associate freely. See Katz v. U.S., 389 U.S. 347, 350 n.5

(1967). The First Amendment applies with equal force to state governments through the Fourteenth Amendment.

This Court has recently re-emphasized that the First Amendment protects an individual's right to join groups and to associate with others holding similar beliefs. The Court has also stated that the freedom of association necessarily presupposes the freedom not to associate:

> Government actions that may unconstitutionally infringe upon this freedom [of association] can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group, it may attempt to require disclosure of the fact of membership in a group seeking anonymity, and it may try to interfere with the internal organization or affairs of the group. By requiring the Jaycees to admit women as full voting members,

> the Minnesota Act works an infringement of the last type. There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate.

Roberts v. United States Jaycees, 468 U.S. 609, 622-23 (1984) (emphasis added, citations omitted). See also Democratic Party v. Wisconsin, 450 U.S. 107, 122 (1981). ("[T]he freedom to associate . . . necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only.")

As former members of this court have stated:

> The First Amendment and the related guarantees of the Bill of Rights . . . create a zone of privacy which precludes government from interfering with private clubs or groups. The associational rights which our system honors permit all white, all black, all brown, and all yellow clubs to be formed. They also permit all Catholic, all Jewish, or all agnostic clubs to be established. Government may not tell a man or woman who his or her associates must be. The individual can be as selective as he desires. So the fact that the Moose Lodge allows only Caucasians to join or come as guests is constitutionally irrelevant, as is the decision of the Black Muslims to admit to their services only members of their race.

Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 179-80 (1972) (J.J. Douglas & Marshall, dissenting on other issues).

"Any interference with the freedom of [an organization] is simultaneously an interference with the freedom of its adherents." Democratic Party v.

Wisconsin, 450 U.S. 107, 122 (1981). The First Amendment creates a preserve where individual rights are made inviolate. Schneider v. Smith, 390 U.S. 17, 25 (1968). The First Amendment is not limited to beliefs and associations that are popular and politically correct, but includes those considered unpopular or even reprehensible. Gilmore v. City of Montgomery, 417 U.S. 556, 575 (1974). The First Amendment protects the controversial as well as the conventional. Whitehill v. Elkins, 389 U.S. 54, 57 (1967). Public intolerance or animosity is not a sufficient basis for abridgement of the Constitution's freedom of association. Coates v. City of Cincinnati, 402 U.S. 611, 615 (1971).

B. **The Members of the Elks Lodge Qualify for First Amendment Protection.**

This Court has recognized that the First Amendment right of free association has two distinct forms:

> Our cases have afforded constitutional protection to freedom of association in two distinct senses. First, the court has held that the Constitution protects against unjustified government interference with an individual's choice to enter into and maintain certain intimate or private relationships [i.e., intimate association]. Second, the court has upheld the freedom of individuals to associate for the purpose of engaging in protected speech or religious activities [i.e., expressive association].

Board of Directors of Rotary Int'l v. Rotary Club, 481 U.S. 537, 544 (1987). The members of the Elks Lodge qualify for First Amendment protection under both categories described above. Most

obvious is the members' right to "expressive association" protection. The Court has acknowledged that expressive association protection extends to a wide variety of activities and purposes:

> The Court also has recognized that the right to engage in activities protected by the First Amendment implies a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. For this reason, impediments to the exercise of one's right to choose one's associates can violate the right of association protected by the First Amendment.

Id. at 548.

The types of activities granted expressive association protection have been described as follows:

> [P]rotected expression may also take the form of quiet persuasion, inculcation of

> traditional values, instruction of the young, and community service. . . . Even . . . participation in community service might become expressive when the activity is intended to develop good morals, reverence, patriotism, and a desire for self-improvement.

Roberts v. United States Jaycees, 468 U.S. 609, 636 (1984) (J. O'Connor, concurring).

Although this is an issue of first impression before this Court, it appears that the activities of the Elks Lodge clearly qualify for expressive association protection. The central activity of the Lodge is the weekly ritual meeting, where Lodge members gather as "brothers" in the bonds of fraternity, just as they have done for the past 125 years. At this private meeting, Elk brothers perform numerous ceremonies and rituals that are sacred

to the members. Through these rituals Lodge members commit themselves to living the principles of the Order -- Brotherly Love, Charity, Justice, and Fidelity. Through the rituals, Lodge members also express devotion to their God and patriotism to their country. (Id.) Certainly, these activities qualify for protection as expressive association.

In addition to the ritual meeting, Lodge members also assemble to perform acts of community service, to promote patriotism, and to engage in charitable endeavors. Through these activities Lodge members live up to the commitments they make during their sacred rituals. Thus, these activities are also protected as expressive association.

The Utah Supreme Court refused to consider whether members of the Elks Lodge qualify for expressive association protection under the First Amendment. It is severely prejudicial to the Elks Lodge to destroy its fraternal status without considering First Amendment protections. This Court should grant the Elks' petition so that these important constitutional rights can be considered.

Although the issue is apparently one of first impression before this Court, it appears that the members of the Elks Lodge also qualify for "intimate association" protection under the First Amendment. The category of intimate association "protects against unjustified government interference with an individual's choice to enter into and

maintain certain intimate or private relationships." Board of Directors of Rotary Int'l v. Rotary Club, 481 U.S. 537, 544 (1987). The Court has "not attempted to mark the precise boundaries of this type of constitutional protection," but has instead stated that the determination of whether an entity qualifies for intimate association protection must be made on a case-by-case basis:

> Determining the limits of state authority over an individual's freedom to enter into a particular association unavoidably entails a careful assessment of where that relationship's objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments.

Id. at 545-46, quoting Roberts v. United States Jaycees, 468 U.S. 609, 620 (1984).

This Court has identified the following factors as being important for determining whether an organization qualifies for intimate association protection:

> In determining whether a particular association is sufficiently personal or private to warrant constitutional protection, we consider factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship.

Rotary Club, 481 U.S. at 546.

Although this Court has never decided the issue, by applying these factors to the case at hand it appears that the Elks Lodge qualifies for intimate association protection. Plaintiff has stipulated that the Elks Lodge is a private, nonprofit organization not open to the general public. Plaintiff also admitted that the Lodge

"has selective criteria for its membership." Furthermore, the purpose of the Elks Lodge is to promote brotherhood and fraternity amongst its members and to further the principles of the order -- Charity, Justice, Brotherly Love, and Fidelity. The Elks Lodge does not advertise for new members and strictly prohibits Lodge members from conducting any type of business activity at the Lodge. Perhaps most importantly, the Elks Lodge strictly forbids all nonmembers from attending the weekly ritual meeting, which plaintiff acknowledged before the trial court constitutes the central activity of the Lodge.

The foregoing stipulated facts, as found by the trial court, prove that the Elks Lodge qualifies for intimate

association protection and distinguish the Elks Lodge from other types of organizations, such as the Rotary Club and the Jaycees. Indeed, this Court recently acknowledged such a distinction in New York State Club Assoc., Inc. v. City of New York, 487 U.S. 1 (1988). In that case the city of New York enacted an ordinance prohibiting gender discrimination in private clubs, but expressly exempted application of the ordinance to benevolent orders. The New York State Club Association argued that the ordinance was unconstitutional under the equal protection clause because the statute allowed discrimination by benevolent orders. This Court flatly rejected the club's argument, finding that there were significant differences between benevolent orders and ordinary

private clubs. Referring to benevolent orders, this Court stated that:

> It is plausible that these associations differ in their practices and purposes from other private clubs that are now covered under local law 63. As the appellate division in this case pointed out, the benevolent orders are organized under the relevant law solely for the benefit of their membership and their beneficiaries, and thus are not public organizations.
>
> * * *
>
> The city counsel's explanation for exempting benevolent orders and religious corporations . . . reflects a view that these associations are different in kind, at least in the crucial respect of whether business activity is prevalent among them, from the associations on whose behalf appellant has brought suit. . . . There is no evidence in the record to indicate that a detailed examination of the practices, purposes, and structures of benevolent orders and religious corporations would show them to be identical in this and other critical

> respects to the private clubs that are covered under the city's anti-discrimination provisions.

Id. at 16-18 (emphasis added).

Although apparently never faced with the issue, this Court has suggested that benevolent orders are unique from ordinary private clubs. Justice Scalia specifically identified the Benevolent and Protective Order of Elks as one of the "benevolent orders" referred to in the Court's opinion. Id. at 21 (J. Scalia, concurring). Notwithstanding this fact, the Utah Supreme Court completely refused to consider whether Elks Lodge members qualify for intimate association protection. The Court should grant the Elks' petition in order to decide this important constitutional issue. As members of this Court have recognized, "an association or club . .

. is permitted to demonstrate that its particular characteristics qualify it for constitutional protection. . . ." Id. at 19 (J.J. O'Connor & Kennedy, concurring). The decision of the Utah Supreme Court destroys the Elks fraternity without giving the Elks such an opportunity. The Elks Lodge therefore urges this Court to grant its petition for a writ of certiorari.

II. THE COURT SHOULD GRANT THIS PETITION SO THAT THE CONSTITUTIONALITY OF THE UTAH CIVIL RIGHTS ACT CAN BE DECIDED WITHIN THE CONSTITUTIONAL FRAMEWORK ESTABLISHED BY THIS COURT.

Plaintiff's complaint seeks injunctive relief prohibiting the Elks Lodge from limiting membership in its fraternal organization to males. The opinion of the Utah Supreme Court grants plaintiff's motion for summary judgment, thereby destroying the fraternal status

of the Elks Lodge as it has existed for 125 years. Quite obviously, the fact that the UCRA destroys the Lodge's right to exist as a fraternity and forces plaintiff's association upon Elks Lodge members constitutes an infringement upon the members' First Amendment right of free association.

The right of free association is undisputedly a fundamental right. See Buckley v. Valeo, 424 U.S. 1, 24-25 (1976); Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 543-44 (1963). "In view of the fundamental nature of the right to associate, governmental action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." Buckley, 424 U.S. at 25. Under the strict scrutiny test, as

enunciated by this Court, a statute that infringes upon the fundamental right of free association will only be upheld when 1) the statute is necessary to fulfill a compelling government objective; and 2) the legislative means are narrowly tailored to the fulfillment of the state's objective. See Elrod v. Burns, 427 U.S. 347, 362-63 (1976); Buckley v. Valeo, 424 U.S. 1, 25, 64-65 (1976).

The Utah Supreme Court refused to apply the strict scrutiny test enunciated above, even though that is the test prescribed by this Court for determining the validity of a statute that infringes upon First Amendment rights. Instead, the Utah court applied its own unique test to resolve the federal question, declaring that

individuals waive their constitutional rights by belonging to an entity that possesses a state liquor license. This Court should grant the Elks' petition so that the constitutionality of the Utah Civil Rights Act can be decided within the constitutional framework enunciated by this Court. Under the appropriate strict scrutiny analysis, the UCRA is unconstitutional as applied to the Elks Lodge.

In order to pass strict scrutiny review, the UCRA must further a compelling government interest. The determination of whether the state's interest in eliminating discrimination outweighs a group's right to free association is a fact sensitive determination decided on a case-by-case basis. See Roberts v. United States

Jaycees, 468 U.S. 609, 620 (1984); Board of Directors of Rotary Int'l v. Rotary Club, 481 U.S. 537, 545-46 (1987). As previously discussed, the facts of this case suggest that any interest the state may have in eliminating discrimination is outweighed by the First Amendment rights of Elks Lodge members.

This Court has made it clear that the United States Constitution will not tolerate overbroad statutes such as the UCRA that unnecessarily restrict associational freedoms:

> It has become axiomatic that precision of regulation must be the touchstone in an area so closely touching our most precious freedoms. Such precision is notably lacking in § 5(a)(1)(D). That statute casts its net across a broad range of associational activities, indiscriminately trapping membership which can be constitutionally punished and membership which cannot be so proscribed. . . . Thus,

> § 5(a)(1)(D) contains the fatal defect of overbreadth because it seeks to bar employment both for association which may be prescribed and for association which may not be prescribed consistently with First Amendment rights. This the constitution will not tolerate.

United States v. Robel, 389 U.S. 258, 265-66 (1967) (emphasis added, citations and quotations omitted).

The UCRA "casts its net across a broad range of associational activities" in an indiscriminate fashion. Id. In doing so, the Act attempts to regulate activities that are protected under the First Amendment. This Court should grant the Elks' petition and strike down the UCRA for being unconstitutional under the First Amendment.

The Utah Supreme Court upheld the UCRA without engaging in the constitutional scrutiny prescribed by this Court

for First Amendment issues. The court's opinion thus has deprived Elks Lodge members of their constitutional rights without allowing them the benefits associated with the strict scrutiny standard of review. This Court should grant the Lodge's petition so that the validity of the UCRA can be determined within the constitutional framework established by this Court.

III. THE COURT SHOULD GRANT THE ELKS' PETITION IN ORDER TO DECIDE THE IMPORTANT QUESTION OF WHETHER INDIVIDUALS WAIVE THEIR CONSTITUTIONAL RIGHTS BY JOINING A BENEVOLENT FRATERNAL OR SORORAL ORDER POSSESSING A STATE LIQUOR LICENSE.

The State of Utah required the Elks Lodge to obtain a state issued private club liquor license in order to provide alcohol to its members. See Utah Code Ann. § 32A-5-101(1) (1991). The Elks Lodge obtained the liquor license, as required by statute. Now the state argues that, because the Elks Lodge possesses a state license, each individual member of the Lodge has waived his constitutional right of free association. This unique method of constitutional analysis appears to be unprecedented. It is unheard of in our society that joining an organization that holds a liquor license results in a

waiver of the individual's basic constitutional rights.

This Court has repeatedly stated that the government cannot discriminate against individuals based upon their membership in an organization. See Application of Stolar, 401 U.S. 23 (1971) (the First Amendment prohibits a state from denying membership to state bar because of an individual's membership in an organization); Hadnott v. Amos, 394 U.S. 358 (1969) (a state may not inquire into an individual's association for the sole purpose of withholding a right or benefit because of what he believes); Rutan v. Republican Party, 497 U.S. 62 (1990) (First Amendment prohibits government from hiring individuals based upon their associations); Elrod v. Burns, 427 U.S.

347 (1976) (conditioning public hiring on political beliefs and associations violates the First Amendment); Gilmore v. City of Montgomery, 417 U.S. 556 (1974) (membership in an organization possessing a discriminatory admissions policy does not provide grounds for exclusion from public facilities); Baird v. State, 401 U.S. 1 (1971) (state may not inquire into a man's views or associations solely for purpose of withholding a right or benefit because of what he believes; First Amendment prohibits a state from punishing a person solely because he is a member of a particular organization). This Court has further stated that an individual does not lose his freedom of association simply because members of a group to which he belongs have participated in

conduct or advocated doctrine that is not protected by the First Amendment:

> The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.

NAACP v. Claiborne Hardware Co., 458 U.S. 886, 908 (1982).

Additionally, this Court has also held that government cannot deny a benefit to a person simply because that person chooses to exercise a constitutional right. See e.g. Speiser v. Randall, 357 U.S. 513, 518 (1958); Shapiro v. Thompson, 394 U.S. 618, 634 (1969); U.S. v. Jackson, 390 U.S. 570, 581 (1968).

The Utah Supreme Court's conclusion that Lodge members waived their constitutional rights contradicts prior

decisions of this Court. It is firmly established that a state cannot use a licensing system to restrain the freedoms granted by the First Amendment. See, e.g., Cantwell v. Connecticut, 310 U.S. 296 (1939); Speiser v. Randall, 367 U.S. 513 (1958). If this rule were abandoned, the state could circumvent all individual rights by simply requiring individuals to obtain a license, and then declaring that, by obtaining the license, the individuals waived their constitutional rights. For example, the state could pass legislation declaring that a person acquiring a marriage license becomes an entity "regulated by the state" so as to fall within the scope of the UCRA. Under the Act, the individual would then be prohibited from selecting his or her

spouse based upon gender. The individual could not successfully challenge the UCRA because, under the state's analysis, the individual waived his or her constitutional right to select his or her spouse by acquiring a marriage license. Quite obviously, as suggested by this Court, individuals do not waive their constitutional rights by acquiring a state license, nor do they waive their rights through membership in a licensed organization.

This principle is especially true in situations where the state is using a license to regulate conduct completely unrelated to the license. In this case the Utah Supreme Court has used the Lodge's liquor license to throw open the doors of the Elks' sacred ritual meeting, thereby destroying the privacy

of the meeting and subjecting the ritual to public scrutiny. The court purports to justify this intrusion by explaining that it is simply making the advantages of the Lodge's liquor license available to all. However, the court fails to realize that no advantages of the liquor license are derived through the ritual meeting. The Lodge's liquor license relates only to the operation of the Lodge's bar. It is completely unrelated to the Lodge's meetings, where all types of alcohol are strictly banned and where no alcoholic beverages are served. Under such conditions the state cannot rely upon the Lodge's liquor license to justify its intrusion into the Lodge's private fraternal matters.

This case has broad-reaching implications. The State of Utah claims

to have inherent power to enact legislation destroying fraternal and sororal organizations, irrespective of the extent to which the organizations provide goods and services. The state claims this same power with respect to organizations that select their membership based upon race, religion, or nationality. See Utah Code Ann. § 13-7-3 (1986). If the state's argument is correct, all organizations that limit membership based upon race, religion, nationality, or gender will be in jeopardy. A survey conducted in 1971 identified literally thousands of organizations throughout the country that restricted their membership based upon race, religion, nationality, and/or gender. A list of these organizations is contained in pp. 120 through 195 of

the appendix. It was estimated that over 70 million people were members of these organizations. The position taken by the State of Utah challenges the First Amendment freedoms of all these individuals.

The State of Utah certainly does not have a compelling interest to destroy fraternal and sororal organizations. This court has stated that legislation restricting First Amendment rights will only be upheld when the legislation protects the gravest of public interests:

> [A]ny attempt to restrict [First Amendment] liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due

> process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly.

Thomas v. Collins, 323 U.S. 516, 530 (1945) (emphasis added).

Fraternal and sororal organizations are a natural and traditional part of American society. Americans have been enjoying the right to organize and join fraternities and sororities since this country was founded. Through such organizations, individuals are able to associate with their fellow brothers or

sisters in an uninhibited manner free from the social pressures that accompany mixed-gender organizations, such as singles bars. Fraternities and sororities do not pose a "clear and present danger" to the public, nor do they constitute a public menace. Consequently the state does not have a compelling interest to destroy fraternities and sororities, which is the effect of the UCRA. The UCRA therefore unconstitutionally abridges the First Amendment freedoms of fraternal and sororal members.

Throughout the country plaintiffs are using state civil rights acts to force their way into private associations that restrict their membership based upon gender. These lawsuits are not limited to official

fraternities and sororities, but are also brought against organizations such as Little League Baseball and the Boy Scouts of America. See National Organization for Women v. Little League Baseball, Inc., 318 A.2d 33 (N.J. Super. 1974); Welsh v. Boy Scouts of America, 993 F.2d 1267 (7th Cir. 1993). Some of these cases have resulted in contrary opinions. Compare Welsh v. Boy Scouts of America, 993 F.2d 1267 (7th Cir. 1993) with Curran v. Mt. Diablo Council of the Boy Scouts of America, 195 Cal.Rptr. 325 (Cal. App. 1983). By granting the Elks' petition this Court can clarify the scope of an individual's right to associate and more fully describe the ability of the state to limit this freedom of association,

thereby decreasing the present state of turmoil surrounding these issues.

The right to associate freely is as fundamental and necessary to a democracy as is freedom of speech, freedom of the press, and freedom of religion. The question presented by this petition is whether that basic freedom of private association is to be extended to American citizens who are members of a national fraternity.

The freedom of association, guaranteed by the First Amendment (and applied to states through the Fourteenth Amendment), and the right of privacy, which underlies not only the First Amendment but other basic guarantees as well (reserved to the people by the Ninth Amendment), demand that the movement toward sexual equality be

accomplished, not by destroying the freedom of men and women to form and maintain a fraternal or sororal organization, but by preserving the right of both men and women to associate in organizations of their own choosing. This freedom should not be impinged or inhibited by attaching the label of "discrimination" to such organizations as the Elks, Moose, or P.E.O. Sisterhood and thereby subjecting them to intrusive government regulation.

In light of the serious challenge that the UCRA poses to the First Amendment freedoms of millions of citizens, this Court should grant the Elks' petition for a writ of certiorari. This case involves a challenge to one of the most important individual freedoms guaranteed under the United States

Constitution and urgently calls for a review by this Court.

Respectfully submitted this 9th day of August, 1989.

STRONG & HANNI

By _____

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APPENDIX

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AMENDED OPINION

This opinion is subject to revision before final publication in the Pacific Reporter.

IN THE SUPREME COURT
OF THE STATE OF UTAH
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Sandra Beynon,
Plaintiff and Appellant,

v.

St. George-Dixie Lodge 1743,
Benevolent & protective Order of Elks,
Defendant and Appellee.

No. 910551

F I L E D
May 14, 1993

Geoffrey J. Butler, Clerk

Fifth District, Washington County
The Honorable J. Philip Eves

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Leonard J. Solfa, Jr., Mooseheart, Illinois, for CONPOR, amicus for defendant

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HALL, Chief Justice:

Plaintiff Sandra Beynon appeals from the order of the Fifth Judicial District Court granting summary judgment to defendant St. George-Dixie Lodge # 1742, Benevolent & protective Order of Elks (the "Elks"). We reverse.

I. FACTS

The facts for the most part are not in dispute. On August 7, 1987, Beynon applied for membership in the Elks Lodge in St. George, Utah. Beynon's membership application was denied solely because she is female.

The Elks is a nonprofit fraternal organization with criteria for membership selection.[1] Except for

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[1]Membership in the Lodge requires that one:
(1) Be a male American citizen;
(2) Be twenty-one years of age or older;

Beynon's application, no membership requests had been rejected for two and one-half years before this suit was filed. The Elks has approximately 1,056 members,[2] and no limit exists for the number of men who may join. In fact, men are actively recruited and encouraged to join.

The Elks' facilities include a restaurant/bar open to members, their families, and guests. Dinner is served

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(3) Have a belief in God;
(4) Have never committed a crime;
(5) Be a noncommunist;
(6) Be sponsored by at least two members of the Lodge;
(7) Be willing to uphold the Constitution and laws of the United States of America;
(8) Be willing to pledge allegiance to the United States and salute the flag;
(9) Be of good character; and
(10) Promote fellowship among members of the organization.

[2]Based on 1989 statistics.

three nights a week, and lunch is served daily, including a Sunday brunch. Nonmembers rent Elks facilities for weddings, parties, and business meetings. The only requirement for use of the facilities is that a member sponsor and attend the event.

The Elks has a St. George City business license and a private club liquor license under the Alcoholic Beverage Control Act (the "ABCA").[3] The liquor license allows the Elks to sell beer and alcohol to its members and their guests. The Elks sells more than $250,000 worth of alcoholic beverages annually.

The stated purpose of the Elks is to promote friendship and fraternal

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[3] See Utah Code Ann. §§ 32A-1-101 to -124, 32A-5-101 to -108.

affiliation among its members and to engage in charitable work. The Elks annually sponsors numerous charitable and social activities in the St. George area. Each Tuesday night the Elks holds a private meeting where the members discuss business and perform certain rituals. The weekly meeting is the only Elks function from which nonmembers are barred.

Plaintiff brought suit against the Elks for declaratory and injunctive relief, claiming that denying her membership application violated her rights under the Utah Civil Rights Act (the "Act").[4] The parties filed cross-motions for summary judgment. The trial court rejected Beynon's claim and granted summary judgment for the Elks.

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[4]Utah Code Ann. §§ 13-7-1 to -4.

In so ruling, the trial court found that the Elks did not qualify as an "enterprise regulated by the state" within the meaning of Utah Code Ann. § 13-7-2(c)(2) because it is a nonprofit organization and is not open to the general public.

Beynon appeals the trial court's decision dismissing her claim. Specifically, she argues that the Act prohibits the Elks from discriminating against women because (1) the Elks is an "enterprise regulated by the state," (2) the Elks is a "business establishment," and (3) the compelling state interest of eradicating discrimination outweighs any First Amendment freedom of association rights of the Elks.

II. STANDARD OF REVIEW

A trial court should grant summary judgment only when no genuine issue of

material fact exists and the moving party is entitled to judgment as a matter of law.[5] In a case such as this, involving statutory construction, we accord the trial court's conclusions of law no deference but review them for correctness.[6]

III. STATUTORY INTERPRETATION OF THE UTAH CIVIL RIGHTS ACT

Beynon claims that the trial court erred when it determined that the Act does not prohibit the Elks from denying her membership solely on the basis of gender. Hence, we must determine the

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[5]Utah R. Civ. P. 56(c); Russell v. Thomson Newspapers. Inc., 842 P.2d 896, 898 (Utah 1992); Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1039 (Utah 1991).

[6]Clover, 808 P.2d at 1040; Blue Cross & Blue Shield v. State, 779 P.2d 634, 636 (Utah 1989); see also Sanderson v. Ovard, 838 P.2d 1134, 1135 (Utah 1992) (per curiam).

proper interpretation of the Act in this case.

Section 13-7-3 of the Act states in pertinent part:

> All persons within the jurisdiction of this state are free and equal and are entitled to full and equal accommodations, advantages, facilities, privileges, goods and services in all business establishments and in all places of public accommodation, and by all enterprises regulated by the state of every kind whatsoever, without discrimination on the basis of race, color, sex religion, ancestry, or national origin.[7]

The parties agree that if the Elks qualifies as a business establishment, place of public accommodation, or state-regulated enterprise, then the Act applies and the Elks may not deny membership to Beynon on the basis of

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[7]Utah Code Ann. § 13-7-3 (emphasis added).

gender. Beynon argues that the Elks is both a business establishment and an enterprise regulated by the state. We conclude that the Elks is an enterprise regulated by the state under the Act. Because we so rule, we need not reach Beynon's argument that the Elks also qualifies as a business establishment.

A. Enterprises Regulated by the State

Subsection 13-7-2(c) defines enterprises regulated by the state as:

> (1) all institutions subject to regulation under the Utah Uniform Commercial Credit Code, Title 70B;
>
> (2) all places of business which sell beer to consumers or house a state liquor store, as permitted by the Alcoholic Beverage Control Act, Title 32A;
>
> (3) all insurers regulated by the Insurance Code, Title 31A; and
>
> (4) all public utilities subject to regulation under

the Public Utilities Act, Title 54.[8]

Under subsection 13-7-2(c) (2), an enterprise regulated by the state includes any place of business that sells beer to consumers or houses a state liquor store as regulated under Title 32A, Utah Code Annotated.[9]9 The trial court focused its decision on the "places of business" language of subsection 13-7-2(c) (2) and determined that even though the Elks sells beer and alcoholic beverages to its members and their guests, it is not a place of business because it is a "non-profit corporation, does not operate to create

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[8]Id. § 13-7-2(c) (emphasis added).

[9]The sale of both beer and liquor is governed by the ABCA. A private club liquor license entitles the holder to dispense both types of alcoholic beverages. See Utah Code Ann. § 32A-5-107(24)-(d)(i), (ii).

monetary profits, and is not open to the general public." Beynon argues, and we agree, that the trial court used an unduly restrictive definition of the term "place of business."

The plain language of subsection 13-7-2(c)(2) contemplates that entities regulated by the ABCA are subject to the antidiscrimination provisions of the Act. In other words, an entity that applies for and receives a state liquor license under the ABCA subjects itself to the provisions of the Act by accepting the license. The ABCA imposes extensive regulatory control over the sale and consumption of alcoholic beverages in Utah. Under the ABCA, all clubs in Utah that dispense alcoholic

beverages must be both nonprofit[10] and private."[11]

The relevant inquiry, then, is whether the Elks qualifies as a business as contemplated by the two statutes. The Elks argues that the trial court was correct in focusing on its private nature and nonprofit status in determining that the Act did not apply. That contention is incorrect for two reasons. First, if those characteristics governed our analysis, the Act would not apply to any private eating and drinking club in Utah because the ABCA requires such establishments to be private and nonprofit. As we will discuss in section II.B., that was certainly not

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[10]See Utah Code Ann. §§ 32A-5-102(1)(e), 32A-5-105(1).

[11]See id. § 32A-5-107(2).

the intent of the legislature in drafting the Act. Second, the record belies the Elks' claim that it is not a business. In fact, it is a licensed business under Utah law and St. George city ordinances. It operates a popular restaurant and bar that annually sells over $250,000 worth of alcoholic beverages to its members and their guests. Under the ABCA and the Act, the Elks is no different than any other private eating and drinking club in the state.

In holding that the Act is inapplicable to the Elks, the trial court relied on Schwenk v. Boy Scouts of America.[12] In Schwenk, the Oregon Supreme Court upheld the sustaining of a demurrer against a nine-year-old girl

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[12]551 P.2d 465 (Or. 1976).

who was denied membership in the Boy Scouts because of her sex. The Schwenk court determined that the Public Accommodation Act, Oregon's civil rights statute, did not apply to the Boy Scouts because it did not qualify as a business or commercial enterprise that offers goods or services to the public.[13]

We think the trial court's reliance on Schwenk is incorrect. The Oregon Public Accommodation Act is much narrower than Utah's Act in two important ways.[14] First, the Oregon act

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[13]Id. at 468.

[14]The Oregon Public Accommodation Act states:

> **30.670 Right of all persons to equal facilities in places of public accommodation.** All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any

expressly excludes from coverage any "bona fide club or place of accommodation which is in its nature distinctly private."[15] No such exception exists in Utah Code Ann. § 13-7-2.[16]

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distinction, discrimination or restriction on account of race, religion, sex, marital status, color or national origin.

30.675 Places of public accommodation defined. (1) A place of public accommodation, subject to the exclusion in subsection (2) of this section, means any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise.

(2) However, a place of public accommodation does not include any institution, bona fide club or place of public accommodation which is in its nature distinctly private.

Or. Rev. Stat. §§ 30.670, 30.675 (1991).

[15]Id. § 30.675(2).

[16]The Schwenk decision has been criticized by the Oregon Court of Appeals in Lloyd Lions Club v. International Ass'n of Lions Clubs, 724 P.2d 887 (Or. Ct. App. 1986). In that

Second, Oregon's act is limited to "places of public accommodation." Utah's Act covers more than public accommodations; it also applies to "all enterprises regulated by the state of any kind whatsoever." This broad language, combined with the specific reference to businesses regulated by the ABCA in subsection 13-7-2 (c)(2), leads us to conclude that the Elks is indeed subject to the Act's antidiscrimination mandates. In short, the Elks may not

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case, the court read the "distinctly private" exception narrowly and held that the Lions Club was subject to the Oregon Public Accommodation Act because it actively recruited new members and was unselective in its acceptance of male applicants. Id. at 891. The court of appeals noted that the trial court below, whose decision it upheld, criticized the Schwenk court for construing the Oregon act too narrowly. Id. The appeals court also referred to the dissent in Schwenk as "cogent." Id. at 891 n.3.

avail itself of the benefits of a liquor license and the license's concomitant state regulation without complying with the legislature's mandate to end discrimination in certain regulated enterprises.[17]

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[17]The Elks cites several cases from other jurisdictions that define "business" in terms of a profit-seeking motive. However, those cases are inapposite because none involve the interpretation of a civil rights act. See Bhan v. N.M.E. Hosps., Inc., 669 F. Supp. 998, 1013 (E.D. Cal. 1987) (antitrust litigation); State Farm Fire & Casualty Co. v. Geary, 699 F. Supp. 756, 761 (N.D. Cal. 1987) (insurance coverage); The Way Int'l v. Limbach, 552 N.E.2d 908, 912 (Ohio 1990) (tax litigation). In contrast, several cases interpreting civil rights acts reject the notion that "business" connotes profit seeking under those statutes. See O'Connor v. Village Green Owners Ass'n, 662 P.2d 427, 430 (Cal. 1983); Warfield v. Peninsula Golf & Country Club, 262 Cal. Rptr. 890, 894 (Cal. Ct. App. 1989); Pines v. Tomson, 206 Cal. Rptr. 866, 875 (Cal. Ct. App. 1984); Lloyd Lions Club, 724 P.2d at 891.

Also, requiring a profit motive to qualify an entity as a business under section 13-7-2 would mean

B. Legislative Intent and Purpose of the Act

The Act's legislative purpose and intent support our determination. Section 13-7-1 states that discrimination by entities governed by the Act violates the public policy of Utah. That section further mandates that the Act "shall be liberally construed with a view to promote the policy and purposes of the act and to promote justice." Moreover, section 13-7-3 applies to "all enterprises regulated by the state of every kind whatsoever." (Emphasis added.) The language of the Act amply demonstrates that the legislature intended it to be construed as broadly

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that no private club regulated by the ABCA would be a business because private clubs are necessarily nonprofit under the ABCA. This would be an absurd result.

as possible to combat invidious discrimination in Utah.

The Act's legislative history also reveals an intent to cover entities such as the Elks. In 1973, the Act was amended to include the phrase "all enterprises regulated by the state."[18] Prior to 1973, the Act prohibited discrimination only in business establishments and places of public accommodation. Because the post-1973 language of subsection 13-7-2(c)(2) specifically governs private clubs regulated by the ABCA, the legislature obviously intended to include such entities within the Act's parameters.

The 1973 amendment also added gender to the list of prohibited

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[18]See 1973 Utah Laws ch. 18, § 3.

classifications for the first time.[19] During debate on the effect of the addition of gender and the phrase "all enterprises regulated by the state," the following colloquy took place:

> Senator Howe: . . . The purpose of [the 1973 amendment] is, I think, to put into our law, a prohibition against discrimination on account of sex. We already have it on that we can't discriminate on the basis of race, color, religion, ancestry, national origin; but it was not -- discrimination on the basis of sex was not included, in this written law, which was passed in 1965. . . . Then I note also that it includes not only places of public accommodation but in enterprises regulated by the state. Now I'm not just sure, frankly, what that means, "enterprises regulated by the state," but I suppose it would be . . .
>
> Senate President: Just about everybody.

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[19] Id.

> Senator Howe: That's right. In other words, it just, applies, prohibits discrimination generally against women. . . .
>
> Senate President: I'm, I'm not sure about one thing -- can you tell me for sure -- . . . I almost hate to mention it -- but, the only place I know of, is the Alta Club that has a separate entrance for women --
>
> Senator Howe: This, this may change that --

Discrimination on Basis of Sex: Hearing on H.B. 311, 40th Legislature, 1973 Utah Laws 33 (statements of Sen. Warren E. Pugh, President, and Sen. Richard C. Howe).

The 1973 amendment's legislative debate reveals that the legislature intended that the new language be construed broadly and that the legislature specifically contemplated that the amendment cover private clubs such as the Alta Club. Since both the Elks and the Alta Club are nonprofit, have membership criteria, and are

regulated under the ABCA, it follows that the Elks is also subject to regulation under the Act.

Obviously, the trial court had some difficulty interpreting the term "places of business." However, if doubt or uncertainty exists as to the meaning or application of an act's provisions, the court should analyze the act in its entirety and "harmonize its provisions in accordance with the legislative intent and purpose."[20] Harmonizing the legislative intent and the provisions of the Act in this case leads to the

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[20]Osuala v. Aetna Life & Casualty, 608 P.2d 242, 243 (Utah 1980); see also Millet v. Clark Clinic Corp., 609 P.2d 934, 936 (Utah 1980) ("This Court's primary responsibility in construing legislative enactments is to give effect to the legislature's underlying intent." (citations omitted)); Jamison v. Utah Home Fire Ins. Co., 559 P.2d 958, 959 (Utah 1977).

inescapable conclusion that the Elks is subject to its terms.[21]

IV. FIRST AMENDMENT CLAIM

The Elks claims that application of the Act violates its right to free association under the First and Fourteenth Amendments to the United States Constitution and article I, section 1 of the Utah Constitution. We do not reach this issue because this case does not implicate the right to free association.

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[21]Moreover, we assume that the legislature meant to create a new category of entities that fall under the Act when it added "all enterprises regulated by the state" in 1973. Otherwise, it would just be adding a redundant phrase to the Act. Whenever possible, statutes should be construed so that no portion is superfluous. See Millett, 609 P.2d at 936; Sweitzer v. Dean, 798 P.2d 27, 31 (Idaho 1990). We follow that tenet here.

Under the ABCA, any entity seeking a private club liquor license must submit itself to the intense regulation imposed by the state legislature. One of the many requirements under the ABCA is that licensees must not violate any law or ordinance.[22] The Elks voluntarily elected to abide by the laws of Utah, including the Act, when it applied for and received a private club liquor license. It may not now reap the benefits of a liquor license without complying with the substantial responsibilities accompanying that license.

As long as the Elks maintains its liquor license, it may not discriminate. Our decision does not impinge on the

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[22]See Utah Code Ann. § 32A-5-105(2)(c).

Elks' right to free association; it merely precludes the Elks from using a state liquor license in a discriminatory fashion. Our reasoning is supported by Cornelius v. Benevolent Protective Order of the Elks,[23] a race discrimination case also involving the Elks organization:

> Whatever the freedom of legitimate Elks and Moose lodges to discriminate racially with respect to membership, if they do they stand to forfeit state aid, direct or indirect. . . Those who believe that racial exclusion fosters fraternity are free to act out their belief, but they may not promote prejudice for profit.[24]

In short, the Elks may not discriminate on the basis of gender as long as it

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[23] 382 F. Supp. 1182 (D. Conn. 1974).

[24] Id. at 1204.

accepts the benefits of a state-issued liquor license.

The Elks cites Roberts v. United States Jaycees[25] and Board of Directors of Rotary International v. Rotary Club of Duarte,[26] in which the United States Supreme Court articulated several factors for determining when an organization is private enough to warrant associational protection under the First Amendment.[27] The Elks claims that it qualifies for the constitutional protection denied to the Jaycees and Rotary Club in Roberts and Rotary International.[28] We need not determine

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[25]468 U.S. 609 (1984).

[26]481 U.S37 (1987).

[27]Roberts, 468 U.S. at 620; Rotary Int'l, 481 U.S. at 546.

[28]Roberts, 468 U.S. at 621; Rotary Int'l, 481 U.S. at 547.

whether Elks activities should be constitutionally protected because the Elks is free to relinquish its liquor license. Moreover, the unique and highly regulatory scheme of the ABCA at issue here was not present in Roberts, Rotary International, or any other case cited by the parties.

We therefore conclude that the trial court erred as a matter of law when it determined that the Act did not apply to the Elks. As long as the Elks holds a private club liquor license, it must comply with the antidiscrimination provisions of the Act.

V. BEYNON'S MOTION TO STRIKE

After the parties filed their briefs to this court, the Elks filed a pleading entitled "Defendant's First Citation of Supplemental Authorities."

The pleading cited to three cases not mentioned in the Elks' appellate brief and contained six pages of discussion concerning those cases. Thereafter, Beynon moved to strike defendant's citation to supplemental authorities, claiming that the Elks violated Utah Rule of Appellate Procedure 24(j).[29] As grounds for her motion, Beynon accurately states that according to rule 24(j), supplemental authorities must be submitted to the court by letter, without argument.

In this case, we believe that the Elks violated rule 24(j). Although supplemental cases may be submitted when "pertinent and significant authorities

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[29]After Beynon filed her motion to strike, the Elks filed yet another pleading with supplemental citations, although this pleading simply listed the cases without elaboration.

come to the attention" of the parties after the briefs are filed or after oral argument, the parties should not use the rule to further argue their case to the court. Submitting a supplemental authority of this sort is tantamount to filing another brief, which is obviously not contemplated under rule 24(j).

Although the Elks did not comply with rule 24(j), no purpose would be served in striking the supplemental authorities cited by it in this case. Our research of the relevant law associated with this issue would undoubtedly have revealed the cases, and we are loathe to disregard them in our analysis. However, we strongly suggest that in the future counsel refrain from stretching the boundaries of what is acceptable under rule 24(j).

We have considered the parties' remaining arguments and find them unavailing. According to the trial court's memorandum of decision, the parties agreed that if the Act applied to the Elks, then Beynon is entitled to relief under her complaint. Since no genuine issue of material fact exists and Beynon is entitled to relief as a matter of law, we remand to the trial court for the sole purpose of entering judgment for Beynon in a manner consistent with this opinion.

WE CONCUR:

Christine M. Durham,
Justice

Michael D. Zimmerman,
Justice

Gregory K. Orme,
Court of Appeals Judge

Stewart, Justice, concurs in the result.

Howe, Associate Chief Justice, having disqualified himself, does not participate herein; Orme, Court of Appeals Judge, sat.

This opinion is subject to revision
before final publication in the
Pacific Reporter

IN THE SUPREME COURT
OF THE STATE OF UTAH

----ooOoo---

Sandra Beynon,
Plaintiff and Appellant,

v.

St. George-Dixie Lodge 1743,
Benevolent & Protective Order
of Elks,
Defendant and Appellee.

No. 910551

F I L E D
April 14,
1993

Geoffrey J.
Butler, Clerk

Fifth District, Washington County
The Honorable J. Philip Eves

Attorneys: Brian M. Barnard, John Pace,
Salt Lake City, for
plaintiff
Glenn C. Hanni,
David R. Nielson, Salt Lake
City, for defendant
R. Paul Van Dam, Att'y Gen.,
Frank D. Mylar, Asst. Att'y
Gen., Salt Lake City, amicus
for plaintiff
Leonard J. Solfa,
Jr., Mooseheart, Illinois,
for CONPOR, amicus for
defendant

HALL, Chief Justice:

Plaintiff Sandra Beynon appeals from the order of the Fifth Judicial District Court granting summary judgment to defendant St. George-Dixie Lodge # 1742, Benevolent & Protective Order of Elks (the "Elks"). We reverse.

I. FACTS

The facts for the most part are not in dispute. On August 7, 1987, Beynon applied for membership in the Elks Lodge in St. George, Utah. Beynon's membership application was denied solely because she is female.

The Elks is a nonprofit fraternal organization with criteria for membership selection.[1] Except for Beynon's

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[1]Membership in the Lodge requires that one:

(1) Be a male American citizen;

application, no membership requests had been rejected for two and one-half years before this suit was filed. The Elks has approximately 1,056 members,[2] and no limit exists for the number of men who may join. In fact, men are actively recruited and encouraged to join.

The Elks' facilities include a restaurant/bar open to members, their

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(2) Be twenty-one years of age or older;
(3) Have a belief in God;
(4) Have never committed a crime;
(5) Be a noncommunist;
(6) Be sponsored by at least two members of the Lodge;
(7) Be willing to uphold the Constitution and laws of the United States of America;
(8) Be willing to pledge allegiance to the United States and salute the flag;
(9) Be of good character; and
(10) Promote fellowship among members of the organization.

[2]Based on 1989 statistics.

families, and guests. Dinner is served three nights a week, and lunch is served daily, including a Sunday brunch. Nonmembers rent Elks facilities for weddings, parties, and business meetings. The only requirement for use of the facilities is that a member sponsor and attend the event.

The Elks has a St. George City business license and a private club liquor license under the Alcoholic Beverage Control Act (the "ABCA").[3] The liquor license allows the Elks to sell beer and alcohol to its members and their guests. The Elks sells more than $250,000 worth of alcoholic beverages annually.

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[3]See Utah Code Ann. §§ 32A-1-101 to -124, 32A-5-101 to -108.

The stated purpose of the Elks is to promote friendship and fraternal affiliation among its members and to engage in charitable work. The Elks annually sponsors numerous charitable and social activities in the St. George area. Each Tuesday night the Elks holds a private meeting where the members discuss business and perform certain rituals. The weekly meeting is the only Elks function from which nonmembers are barred.

Plaintiff brought suit against the Elks for declaratory and injunctive relief, claiming that denying her membership application violated her rights under the Utah Civil Rights Act (the "Act").[4] The parties filed cross-motions for summary judgment. The trial

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[4]Utah Code Ann. §§ 13-7-1 to -4.

court rejected Beynon's claim and granted summary judgment for the Elks. In so ruling, the trial court found that the Elks did not qualify as an "enterprise regulated by the state" within the meaning of Utah Code Ann. § 13-7-2(c)(2) because it is a nonprofit organization and is not open to the general public.

Beynon appeals the trial court's decision dismissing her claim. Specifically, she argues that the Act prohibits the Elks from discriminating against women because (1) the Elks is an "enterprise regulated by the state," (2) the Elks is a "business establishment," and (3) the compelling state interest of eradicating discrimination outweighs any First Amendment freedom of association rights of the Elks.

II. STANDARD OF REVIEW

A trial court should grant summary judgment only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.[5] In a case such as this, involving statutory construction, we accord the trial court's conclusions of law no deference but review them for correctness.[6]

III. STATUTORY INTERPRETATION OF THE UTAH CIVIL RIGHTS ACT

Beynon claims that the trial court erred when it determined that the Act does not prohibit the Elks from denying

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[5]Utah R. Civ. P. 56(c); Russell v. Thomson Newspapers. Inc., 842 P.2d 896, 898 (Utah 1992); Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1039 (Utah 1991).

[6]Clover, 808 p.2d at 1040; Blue Cross & Blue Shield v. State, 779 P.2d 634, 636 (Utah 1989); see also Sanderson v. Ovard, 838 P.2d 1134, 1135 (Utah 1992) (per curiam).

her membership solely on the basis of gender. Hence, we must determine the proper interpretation of the Act in this case.

Section 13-7-3 of the Act states in pertinent part:

> All persons within the jurisdiction of this state are free and equal and are entitled to full and equal accommodations, advantages, facilities, privileges, goods and services in all business establishments and in all places of public accommodation. and by all enterprises regulated by the state of every kind whatsoever, without discrimination on the basis of race, color, sex religion, ancestry, or national origin.[7]

The parties agree that if the Elks qualifies as a business establishment, place of public accommodation, or state-regulated enterprise, then the Act

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[7]Utah Code Ann. § 13-7-3 (emphasis added).

applies and the Elks may not deny membership to Beynon on the basis of gender. Beynon argues that the Elks is both a business establishment and an enterprise regulated by the state. We conclude that the Elks is an enterprise regulated by the state under the Act. Because we so rule, we need not reach Beynon's argument that the Elks also qualifies as a business establishment.

A. Enterprises Regulated by the State

Subsection 13-7-2(c) defines enterprises regulated by the state as:

> (1) all institutions subject to regulation under the Utah Uniform Commercial Credit Code, Title 70B;
>
> (2) all places of business which sell beer - to consumers or house a state liquor store, as permitted by the Liquor Control Act. Title 32;
>
> (3) all insurers regulated by the Insurance Code, Title 31A; and

(4) all public utilities subject to regulation under the Public Utilities Act, Title 54.[8]

Under subsection 13-7-2 (c)(2), an enterprise regulated by the state includes any place of business that sells beer to consumers or houses a state liquor store as regulated under Title 32A, Utah Code Annotated.[9] The

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[8]Id. § 137-2(c) (emphasis added).

[9]Reference to places of business "which sell beer to consumers or house a state liquor store, as permitted by the Liquor Control Act, Title 32" causes some confusion that should be clarified. The problem stems from the fact that subsection 13-7-2 (c) (2) has not been amended to comport with recent changes in language to which it cites.

First, this section refers to the ABCA's predecessor, the Liquor Control Act', which was codified at Utah Code Annotated, Title 32 before being repealed and replaced by the ABCA in 1985. See 1985 Utah Laws ch. 1975, § 2. The ABCA is presently codified at Utah Code Annotated, Title 32A. These changes (i. e., changing the name of the statute from the Liquor Control Act to the ABCA and replacing Title 32 with

trial court focused its decision on the "places of business" language of

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32A), although mentioned in part in the compiler's notes to section 13-7-2, are not reflected in the actual text of that section as it presently reads. We therefore take judicial notice of the changes and substitute ABCA for Liquor Control Act and Title 32A for Title 32 for purposes of this appeal.

Second, the mandate that the Act applies to businesses that "house a state liquor store" no longer reflects the reality of the present ABCA statutory scheme. When the Act was amended in 1973 to add subsection 13-7-2(c), see 1973 Utah Laws ch. 18, § 2, all entities dispensing liquor actually "housed a state liquor store" that the entity leased from the state. See Utah Code Ann. §§ 32-1-3, -36, -36.5 (repealed 1985). The old language was replaced in part with the private club liquor license regulations located in sections 32A-5-101 to -108. Therefore, for purposes of this case, an entity that "houses a state liquor store" is analogous to a private club that holds a state liquor license under the ABCA.

One final point deserves mention. The sale of both beer and liquor is governed by the ABCA. A private club liquor license entitles the holder to dispense both types of alcoholic beverages. See Utah Code Ann. § 32A-5-107(24)(d)(i), (ii).

subsection 13-7-2(c)(2) and determined that even though the Elks sells beer and alcoholic beverages to its members and their guests, it is not a place of business because it is a "non-profit corporation, does not operate to create monetary profits, and is not open to the general public." Beynon argues, and we agree, that the trial court used an unduly restrictive definition of the term "place of business."

The plain language of subsection 13-7-2(c)(2) contemplates that entities regulated by the ABCA are subject to the antidiscrimination provisions of the Act. In other words, an entity that applies for and receives a state liquor license under the ABCA subjects itself to the provisions of the Act by accepting the license. The ABCA imposes

extensive regulatory control over the sale and consumption of alcoholic beverages in Utah. Under the ABCA, all clubs in Utah that dispense alcoholic beverages must be both nonprofit[10] and private."[11]

The relevant inquiry, then, is whether the Elks qualifies as a business as contemplated by the two statutes. The Elks argues that the trial court was correct in focusing on its private nature and nonprofit status in determining that the Act did not apply. That contention is incorrect for two reasons. First, if those characteristics governed our analysis, the Act would not apply to any private eating and drinking club in

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[10]See Utah Code Ann. §§ 32A-5-102(1)(e), 32A-5-105(1).

[11]See id. § 32A-5-107(2).

Utah because the ABCA requires such establishments to be private and nonprofit. As we will discuss in section II.B., that was certainly not the intent of the legislature in drafting the Act. Second, the record belies the Elks' claim that it is not a business. In fact, it is a licensed business under Utah law and St. George city ordinances. It operates a popular restaurant and bar that annually sells over $250,000 worth of alcoholic beverages to its members and their guests. Under the ABCA and the Act, the Elks is no different than any other private eating and drinking club in the state.

In holding that the Act is inapplicable to the Elks, the trial court relied on Schwenk v. Boy Scouts of

America.[12] In Schwenk, the Oregon Supreme Court upheld the sustaining of a demurrer against a nine-year-old girl who was denied membership in the Boy Scouts because of her sex. The Schwenk court determined that the Public Accommodation Act, Oregon's civil rights statute, did not apply to the Boy Scouts because it did not qualify as a business or commercial enterprise that offers goods or services to the public.[13]

We think the trial court's reliance on Schwenk is incorrect. The Oregon Public Accommodation Act is much narrower than Utah's Act in two important ways.[14] First, the Oregon act

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[12]551 P.2d 465 (Or. 1976).

[13]Id. at 468.

[14]The Oregon Public Accommodation Act states:

expressly excludes from coverage any "bona fide club or place of accommodation which is in its nature distinctly

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30.670 Right of all persons to equal facilities in places of public accommodation. All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of race, religion, sex, marital status, color or national origin.

30.675 places of public accommodation defined. (1) A place of public accommodation, subject to the exclusion in subsection (2) of this section, means any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise.

(2) However, a place of public accommodation does not include any institution, bona fide club or place of public accommodation which is in its nature distinctly private.

Or. Rev. Stat. §§ 30.670, 30.675 (1991).

private."[15] No such exception exists in Utah Code Ann. § 13-7-2.[16]

Second, Oregon's act is limited to "places of public accommodation." Utah's Act covers more than public accommodations; it also applies to "all enterprises regulated by the state of any kind whatsoever." This broad language, combined with the specific

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[15]Id. § 30.675(2).

[16]The Schwenk decision has been criticized by the Oregon Court of Appeals in Lloyd Lions Club v. International Ass'n of Lions Clubs, 724 P.2d 887 (Or. Ct. App. 1986). In that case, the court read the "distinctly private" exception narrowly and held that the Lions Club was subject to the Oregon Public Accommodation Act because it actively recruited new members and was unselective in its acceptance of male applicants. Id. at 891. The court of appeals noted that the trial court below, whose decision it upheld, criticized the Schwenk court for construing the Oregon act too narrowly. Id. The appeals court also referred to the dissent in Schwenk as "cogent." Id. at 891 n.3.

reference to businesses regulated by the ABCA in subsection 13-7-2 (c)(2), leads us to conclude that the Elks is indeed subject to the Act's antidiscrimination mandates. In short, the Elks may not avail itself of the benefits of a liquor license and the license's concomitant state regulation without complying with the legislature's mandate to end discrimination in certain regulated enterprises.[17]

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[17]The Elks cites several cases from other jurisdictions that define "business" in terms of a profit-seeking motive. However, those cases are inapposite because none involve the interpretation of a civil rights act. See Bhan v. N.M.E. Hosps., Inc., 669 F. Supp. 998, 1013 (E.D. Cal. 1987) (antitrust litigation); State Farm Fire & Casualty Co. v. Geary, 699 F. Supp. 756, 761 (N.D. Cal. 1987) (insurance coverage); The Way Int'l v. Limbach, 552 N.E.2d 908, 912 (Ohio 1990) (tax litigation). In contrast, several cases interpreting civil rights acts reject the notion that "business" connotes profit seeking under those statutes.

B. Legislative Intent and Purpose of the Act

The Act's legislative purpose and intent support our determination. Section 13-7-1 states that discrimination by entities governed by the Act violates the public policy of Utah. That section further mandates that the Act "shall be liberally construed with a view to promote the policy and purposes of the act and to promote justice." Moreover, section 13-7-3 applies to "all

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See O'Connor v. Village Green Owners Ass'n, 662 P.2d 427, 430 (Cal. 1983); Warfield v. Peninsula Golf & Country Club, 262 Cal. Rptr. 890, 894 (Cal. Ct. App. 1989); Pines v. Tomson, 206 Cal. Rptr. 866, 875 (Cal. Ct. App. 1984); Lloyd Lions Club, 724 P.2d at 891.

Also, requiring a profit motive to qualify an entity as a business under section 13-7-2 would mean that no private club regulated by the ABCA would be a business because private clubs are necessarily nonprofit under the ABCA. This would be an absurd result.

enterprises regulated by the state of every kind whatsoever." (Emphasis added.) The language of the Act amply demonstrates that the legislature intended it to be construed as broadly as possible to combat invidious discrimination in Utah.

The Act's legislative history also reveals an intent to cover entities such as the Elks. In 1973, the Act was amended to include the phrase "all enterprises regulated by the state."[18] Prior to 1973, the Act prohibited discrimination only in business establishments and places of public accommodation. Because the post-1973 language of subsection 13-7-2(c)(2) specifically governs private clubs regulated by the ABCA, the legislature

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[18]See 1973 Utah Laws ch. 18, § 3.

obviously intended to include such entities within the Act's parameters.

The 1973 amendment also added gender to the list of prohibited classifications for the first time.[19] During debate on the effect of the addition of gender and the phrase "all enterprises regulated by the state," the following colloquy took place:

> Senator Howe: . . . The purpose of [the 1973 amendment] is, I think, to put into our law, a prohibition against discrimination on account of sex. We already have it on -- that we can't discriminate on the basis of race, color, religion, ancestry, national origin; but it was not -- discrimination on the basis of sex was not included, in this written law, which was passed in 1965. . . . Then I note also that it includes not only places of public accommodation but in enterprises regulated by the state. Now I'm not just sure,

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[19] Id.

> frankly, what that means, "enterprises regulated by the state," but I suppose it would be . . .
>
> Senate President: Just about everybody.
>
> Senator Howe: That's right. In other words, it just, applies, prohibits discrimination generally against women. . . .
>
> Senate President: I'm, I'm not sure about one thing -- can you tell me for sure -- . . . I almost hate to mention it -- but, the only place I know of, is the Alta Club that has a separate entrance for women --
>
> Senator Howe: This, this may change that --
>
> . . . .

Discrimination on Basis of Sex: Hearing on H.B. 311, 40th Legislature, 1973 Utah Laws 33 (statements of Sen. Warren E. Pugh, President, and Sen. Richard C. Howe).

The 1973 amendment's legislative debate reveals that the legislature intended that the new language be construed broadly and that the

legislature specifically contemplated that the amendment cover private clubs such as the Alta Club. Since both the Elks and the Alta Club are nonprofit, have membership criteria, and are regulated under the ABCA, it follows that the Elks is also subject to regulation under the Act.

Obviously, the trial court had some difficulty interpreting the term "places of business." However, if doubt or uncertainty exists as to the meaning or application of an act's provisions, the court should analyze the act in its entirety and "harmonize its provisions in accordance with the legislative intent and purpose."[20] Harmonizing the

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[20]Osuala v. Aetna Life & Casualty, 608 P.2d 242, 243 (Utah 1980); see also Millet v. Clark Clinic Corp., 609 P.2d 934, 936 (Utah' 1980) ("This Court's primary responsibility in construing

legislative intent and the provisions of the Act in this case leads to the inescapable conclusion that the Elks is subject to its terms.[21]

IV. FIRST AMENDMENT CLAIM

The Elks claims that application of the Act violates its right to free association under the First and Fourteenth Amendments to the United States Constitution and article I,

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legislative enactments is to give effect to the legislature's underlying intent." (citations omitted)); Jamison v. Utah Home Fire Ins. Co., 559 P.2d 958, 959 (Utah 1977).

[21]Moreover, we assume that the legislature meant to create a new category of entities that fall under the Act when it added "all enterprises regulated by the state" in 1973. Otherwise, it would just be adding a redundant phrase to the Act. Whenever possible, statutes should be construed so that no portion is superfluous. See Millett, 609 P.2d at 936; Sweitzer v. Dean, 798 P.2d 27, 31 (Idaho 1990). We follow that tenet here.

section 1 of the Utah Constitution. We do not reach this issue because this case does not implicate the right to free association.

Under the ABCA, any entity seeking a private club liquor license must submit itself to the intense regulation imposed by the state legislature. One of the many requirements under the ABCA is that licensees must not violate any law or ordinance.[22] The Elks voluntarily elected to abide by the laws of Utah, including the Act, when it applied for and received a private club liquor license. It may not now reap the benefits of a liquor license without complying with the substantial

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[22]See Utah Code Ann. § 32A-5-105(2)(c).

responsibilities accompanying that license.

As long as the Elks maintains its liquor license, it may not discriminate. Our decision does not impinge on the Elks' right to free association; it merely precludes the Elks from using a state liquor license in a discriminatory fashion. Our reasoning is supported by Cornelius v. Benevolent Protective Order of the Elks,[23] a race discrimination case also involving the Elks organization:

> Whatever the freedom of legitimate Elks and Moose lodges to discriminate racially with respect to membership, if they do they stand to forfeit state aid, direct or indirect. . . . Those who believe that racial exclusion fosters fraternity are free to act out their belief, but they may not

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[23]382 F. Supp. 1182 (D. Conn. 1974).

promote prejudice for profit.[24]

In short, the Elks may not discriminate on the basis of gender as long as it accepts the benefits of a state-issued liquor license.

The Elks cites Roberts v. United States Jaycees[25] and Board of Directors of RotarY International v. Rotary Club of Duarte,[26] in which the United States Supreme Court articulated several factors for determining when an organization is private enough to warrant associational protection under the First Amendment.[27] The Elks claims that it qualifies for the constitutional

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[24]Id. at 1204.

[25]468 U.S. 609 (1984).

[26]481 U.S. 537 (1987).

[27]Roberts, 468 U.S. at 620; Rotary Int'l, 481 U.S. at 546.

protection denied to the Jaycees and Rotary Club in Roberts and Rotary International.[28] We need not determine whether Elks activities should be constitutionally protected because the Elks is free to relinquish its liquor license. Moreover, the unique and highly regulatory scheme of the ABCA at issue here was not present in Roberts, Rotary International, or any other case cited by the parties.

We therefore conclude that the trial court erred as a matter of law when it determined that the Act did not apply to the Elks. As long as the Elks holds a private club liquor license, it must comply with the antidiscrimination provisions of the Act.

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[28]Roberts, 468 U.S. at 621; Rotary Int'l, 481 U.S. at 547.

V. BEYNON'S MOTION TO STRIKE

After the parties filed their briefs to this court, the Elks filed a pleading entitled "Defendant's First Citation of Supplemental Authorities." The pleading cited to three cases not mentioned in the Elks' appellate brief and contained six pages of discussion concerning those cases. Thereafter, Beynon moved to strike defendant's citation to supplemental authorities, claiming that the Elks violated Utah Rule of Appellate Procedure 24(j).[29] As grounds for her motion, Beynon accurately states that according to rule 24(j), supplemental authorities must be

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[29]After Beynon filed her motion to strike, the Elks filed yet another pleading with supplemental citations, although this pleading simply listed the cases without elaboration.

submitted to the court by letter, without argument.

In this case, we believe that the Elks violated rule 24(j). Although supplemental cases may be submitted when "pertinent and significant authorities come to the attention" of the parties after the briefs are filed or after oral argument, the parties should not use the rule to further argue their case to the court. Submitting a supplemental authority of this sort is tantamount to filing another brief, which is obviously not contemplated under rule 24(j).

Although the Elks did not comply with rule 24(j), no purpose would be served in striking the supplemental authorities cited by it in this case. Our research of the relevant law associated with this issue would

undoubtedly have revealed the cases, and we are loathe to disregard them in our analysis. However, we strongly suggest that in the future counsel refrain from stretching the boundaries of what is acceptable under rule 24(j).

We have considered the parties' remaining arguments and find them unavailing. According to the trial court's memorandum of decision, the parties agreed that if the Act applied to the Elks, then Beynon is entitled to relief under her complaint. Since no genuine issue of material fact exists and Beynon is entitled to relief as a matter of law, we remand to the trial court for the sole purpose of entering judgment for Beynon in a manner consistent with this opinion.

WE CONCUR:

Christine M. Durham, Justice

Michael D. Zimmerman, Justice

Gregory K. Orme, Court of Appeals Judge

Stewart, Justice, concurs in the result.

Howe, Associate Chief Justice, having disqualified himself, does not participate herein; Orme, Court of Appeals Judge, sat.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

SANDRA BEYNON,	)	
Plaintiff,	)	MEMORANDUM DECISION
vs.	)	
ST. GEORGE-DIXIE LODGE #1743 BENEVOLENT & PROTECTIVE ORDER OF ELKS,	)	
	)	Civil No. 900503229
Defendant.	)	

This matter came before the Court on October 30, 1991, for hearing on Plaintiff's Motion for Partial Summary Judgment and Defendant's Motion for Summary Judgment. The plaintiff was present and represented by Brian M. Barnard, her attorney. The defendant was represented by Glenn C. Hanni, its attorney. The Court heard oral argument

and took the matter under submission. Being now fully advised in the premises the Court enters the following decision and order.

By her complaint in this matter plaintiff seeks declaratory and injunctive relief for the reason that she has been denied membership in the defendant Elks Lodge (hereinafter "Lodge"). Plaintiff alleges that the denial violates the Utah Civil Rights Act, U.C.A. 13-7-1 et seq. The facts are not in dispute insofar as they are material to a determination of the issues in this case. The parties so stipulated at the October 30, 1991 hearing.

FACTS

1. On or about August 7, 1987, plaintiff, a female, applied for membership in the Lodge.

2. On or about September 29, 1987, the Lodge rejected plaintiff's application solely on the basis that plaintiff is female.

3. Lodge is an organization which has selective criteria for its membership and is not open to the general public.

4. Membership in the Lodge requires that one:

a. Be a male American citizen
b. Be 21 years of age or older
c. Have a belief in God
d. Have never committed a crime
e. Be a non-communist
f. Be sponsored by at least two members of the Lodge
g. Be willing to uphold the Constitution and laws of

the United States of America

h. Be willing to pledge allegiance to the United States and salute the flag

i. Be of good character

j. Promote fellowship amongst members of the defendant organization.

5. Lodge is a private, fraternal club not open to the general public.

6. Lodge sells beer pursuant to a proper license.

7. Lodge is a licensee or permittee of the State of Utah for purposes of selling liquor on its premises.

8. Lodge does not sell beer or liquor to the general public, nor does it offer its other services and activities to the general public, but only to its members and their guests.

9. Lodge is a non-profit organization under the laws of the State of Utah.

10. Lodge does not engage in business for profit.

ANALYSIS

The cross Motions for Summary Judgment turn on the question of whether the Utah Civil Rights Act applies to Lodge. The parties agree that if the Act applies to Lodge, then plaintiff is entitled to relief. Likewise, if the Act does not apply to Lodge, plaintiff's Complaint must fail. The case presents the rather narrow question: Is Lodge an "Enterprise regulated by the state" within the meaning of U.C.A. 13-7-2 (3) (b)? Neither party has presented any authority indicating that this issue has been addressed by any appellate court.

Section 13-7-1 U.C.A. makes the Utah Civil Rights Act applicable to all enterprises regulated by the state and would prohibit gender discrimination by those enterprises. "Enterprises regulated by the state" means:

> "(b) all places of business which sell beer to consumers or house a state liquor store, as permitted by the Alcoholic Beverage Control Act, Title 32A;" U.C.A. 13-7-2 (3) (b)]

The parties agree that Lodge sells beer to consumers and disagree whether Lodge houses a state liquor store. Since the statute speaks in the disjunctive, it is of no import whether Lodge houses a state liquor store. It is enough that it sells beer.

The real question is whether Lodge is a "place of business" within the meaning of the statute. The term business is especially difficult to

define. The term itself has no definite or legal meaning. (Black's Law Dictionary, 4th Edition, p. 248). It is obviously a broad term capable of different meanings in different contexts. The legislature did not define the word or the phrase when it was placed in the statute. No Utah Court decision supplies the definition. It is left to this Court to state the definition as a matter of first impression.

In determining the meaning of "place of business", the Court is influenced by rulings of other Courts. In Schwenk v. B.S.A., 551 P. 2d, 465 (Oregon, 1976) the Oregon Supreme Court ruled that the Boy Scouts of America was not a business subject to Oregon's civil rights act because it was not a

commercial enterprise which offers goods or services to the public. Defendants have cited several cases from other jurisdictions, State and Federal, which seem to apply a similar definition for purposes of civil rights acts.

This Court is persuaded that the legislature intended to prohibit gender discrimination in all places where commercial activities for purposes of making monetary profit and offered to the general public are being conducted. The Lodge is a non-profit organization, does not operate to create monetary profits, and is not open to the general public.

Accordingly, the Court Denies plaintiff's Motion and Grants defendant's Motion. Summary Judgment is

Granted to defendant. Plaintiff's Complaint is Ordered Dismissed.

Dated this _____ day of November, 1991.

_____
J. PHILIP EVES
FIFTH DISTRICT JUDGE

Mailing Certificate

I hereby certify that on this _____ day of November, 1991, I mailed true and correct copies of the above and foregoing Memorandum Decision to the following:

Brian M. Barnard, Esq.
Utah Legal Clinic
214 East Fifth South
Salt Lake City, UT
84111

Glenn C. Hanni, Esq.
600 Boston Bldg.
Salt Lake City, UT
84111

_____

Glenn C. Hanni, A1327
G. Eric Nielson, 5327
STRONG & HANNI
Attorneys for Defendant
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

IN THE FIFTH JUDICIAL DISTRICT COURT OF

WASHINGTON COUNTY, STATE OF UTAH

SANDRA BEYNON, Plaintiff	)	
vs.	)	J U D G M E N T
ST. GEORGE-DIXIE LODGE #1743 BENEVOLENT & PROTECTIVE ORDER OF ELKS,	)	Civil No. 88-2181
	)	Hon. J. Philip Eves
Defendant	)	

Plaintiff's motion for summary judgment and defendant's motion for summary judgment came on for hearing before the court on October 30, 1991. Plaintiff was represented by her

attorney, Brian M. Barnard. Defendant was represented by its attorney, Glenn C. Hanni of the firm of Strong & Hanni. Depositions of various witnesses were filed with the clerk and were ordered opened and published. The court having considered the records, files, depositions, briefs, and having heard arguments of counsel, and having made and entered its Memorandum Decision on the 4th day of November: 1991, and being fully advised,

IT IS ORDERED, ADJUDGED AND DECREED:

1. For the reasons stated in the court's Memorandum Decision dated November 4, 1991, the motion of plaintiff for summary judgment is hereby denied, and the motion of defendant for summary judgment is hereby granted.

2. Judgment is hereby entered in favor of the defendant St. George-Dixie Lodge #1743, Benevolent and Protective Order of Elks and against the plaintiff Sandra Beynon, no cause of action.

3. Defendant is hereby awarded its costs.

Dated this ___ day of_____, 1991.

BY THE COURT:

_____
J. Philip Eves, Judge

MAILING CERTIFICATE

I hereby certify that on the 11th day of October, 1991, I mailed a true and correct copy of the foregoing Judgment, first-class postage prepaid, to:

Brian M. Barnard
Utah Legal Clinic
214 East Fifth South
Salt Lake City, Utah 84111-3204

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

May 13, 1993

OFFICE OF THE CLERK

Glenn C. Hanni
David R. Nielson
STRONG & HANNI
Attorneys at Law
9 Exchange Place, #600
Salt Lake City, UT, 84111

Sandra Beynon, personally and
on behalf of a class of female
persons similarly situated,
Plaintiffs and Appellants,
v. No. 910551
St. George-Dixie Lodge #1743, 90-050
Benevolent and Protective -3229
Order of Elks,
Defendants and Appellees.

THIS DAY, Petition for Rehearing having been heretofore considered, and the Court being sufficiently advised in the premises, it is ordered that a rehearing be, and the same is, denied.

Geoffrey J. Butler
Clerk

CHAPTER 7

CIVIL RIGHTS

13-7-1. Policy and purposes of act.

It is hereby declared that the Practice of discrimination on the basis of race, color, sex, religion, ancestry, or national origin in business establishments or places of public accommodation or in enterprises regulated by the state endangers the health, safety, and general welfare of this state and its inhabitants; and that such discrimination in business establishments or places of public accommodation or in enterprises regulated by the state, violates the public policy of this state. It is the purpose of this act to assure all citizens full and equal availability of

all goods, services and facilities offered by business establishments and places of public accommodation and enterprises regulated by the state without discrimination because of race, color, sex, religion, ancestry, or national origin. The rules of common law that statutes in derogation thereof shall be strictly construed has no application to this act. This act shall be liberally construed with a view to promote the policy and purposes of the act and to promote justice. The remedies provided herein shall not be exclusive but shall be in addition to any other remedies available at law or equity.

13-7-2. Definitions.

(1) The term "place of public accommodation" includes every place,

establishment, or facility of whatever kind, nature, or class that caters or offers its services, facilities, or goods to the general public for a fee or charge, except, any establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence; provided that any place, establishment, or facility that caters or offers its services, facilities, or goods to the general public gratuitously shall be within the definition of this term if it receives any substantial governmental subsidy or support; but the term shall not apply to any institution, church, any apartment house, club, or place of accommodation which is in its

nature distinctly private except to the extent that it is open to the public.

(2) The term "person" includes one or more individuals, partnerships, associations, organizations, corporations, labor unions, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons.

(3) "Enterprises regulated by the state" means:

(a) all institutions subject to regulation under the Utah Uniform Commercial Credit Code, Title 70B [Utah Consumer Credit Code, Title 70C];

(b) all places of business which sell beer to consumers or house a state liquor store, as permitted by the Alcoholic

Beverage Control Act, Title 32A;

(c) all insurers regulated by the Insurance Code, Title 31A; and

(d) all public utilities subject to regulation under the Public Utilities Act, Title 54.

13-7-3. Equal right in business establishments, places of public accommodation, and enterprises regulated by the state.

All persons within the jurisdiction of this state are free and equal and are entitled to full and equal accommodations, advantages, facilities, privileges, goods and services in all business establishments and in all places of public accommodation, and by

all enterprises regulated by the state of every kind whatsoever, without discrimination on the basis of race, color, sex, religion, ancestry or national origin. Nothing in this act shall be construed to deny any person the right to relate the operation of a business establishment or place of public accommodation or an enterprise regulated by the state in a manner which applies uniformly to all persons without regard to race, color, sex, religion, ancestry, or national origin; or to deny any religious organization the right to regulate the operation and procedures of its establishments.

13-7-4. Business establishment, place of public accommodation, or enterprise regulated by the state denying rights deemed public nuisance -- Investigation and conciliation -- Action to enjoin -- Civil

action for damages -- Expenses of defending action.

Any business establishment or place of public accommodation or enterprise regulated by the state in which a violation of the rights provided in § 13-7-3 of this act occurs is a public nuisance. The operator of any such business establishment or place of public accommodation or enterprise regulated by the state shall be deemed guilty of maintaining a public nuisance and may be enjoined as hereinafter provided.

(a) Upon application to the attorney general by any person denied the rights guaranteed by § 13-7-3, the attorney general shall investigate and seek to conciliate the matter.

(b) An action to enjoin any nuisance defined in this section may be brought in the name of the state of Utah by the attorney general. Upon the trial of the cause, on finding that the material allegations of the complaint are true, the court shall order such nuisance to be abated, and enjoin all persons from maintaining or permitting such nuisance. When any injunction as herein provided has been granted it shall be binding upon the defendant and shall act as an injunction in personam against the defendant throughout the state.
(c) Any person who is denied the rights provided for in § 13-7-3 shall have a civil action for damages and any other remedy

available in law or equity against any person who denies him the rights provided for in § 13-7-3 or who aids, incites or conspires to bring about such denial.

(d) Any business establishment or place of public accommodation or enterprises regulated by the state charged with maintaining a public nuisance in violation of this act, which is determined or found not to be in violation of this act, may be awarded all actual and necessary expenses incurred in defending such action, as determined and approved by the court having jurisdiction of the matter.

UTAH CODE

ANNOTATED

TITLE 32A

ALCOHOLIC BEVERAGES

CHAPTER 5
PRIVATE CLUB LIQUOR LICENSES

32A-5-101. Commission's power to license private clubs -- Limitations.

(1) Before any private club may sell or allow the consumption of liquor on its premises, it shall first obtain a license from the commission as provided in this chapter.

(2) The commission may issue private club liquor licenses to social clubs recreational, athletic, or kindred associations incorporated under the Utah Nonprofit Corporation and Cooperative Association Act, which desire to maintain premises upon which alcoholic beverages may be stored, sold, served,

and consumed. All such licenses shall be issued in the name of an officer or director of the club or association.

(3) A nonprofit corporation, association, or club or any officer, director managing agent, or employee of a nonprofit corporation, association, or club may not store, sell, serve, or permit consumption of liquor upon its premises, under a permit issued by local authority or otherwise, unless a private club liquor license has been first issued by the commission. Violation of this subsection is a class A misdemeanor.

(4) Subject to this subsection, the commission may issue private club liquor licenses at places and in numbers as it considers necessary. The total number of private club liquor licenses

may not at any time aggregate more than that number determined by dividing the population of the state by 7,000. Population shall be determined by the most recent United States decennial or special census or by any other population determination made by the United States or state governments.

(a) The commission may issue seasonal private club liquor licenses to be established in areas and for periods as it considers necessary. A seasonal private club liquor license may not be operated for a period longer than nine consecutive months subject to the following restrictions:

(i) Licenses issued for operation during summer time periods are known as "Seasonal

A" club licenses. The period of operation for a "Seasonal A" club license may begin as early as February 1 and may continue until October 31.

(ii) Licenses issued for operation during winter time periods are known as "Seasonal B" club licenses. The period of operation for a "Seasonal B" club license may begin as early as September 1 and may continue until May 31.

(iii) In determining the number of private club liquor licenses that the commission may issue under this section, seasonal licenses are counted as one half of one private club liquor license. Each

"Seasonal A" license shall be paired with a "Seasonal B" license and the total number of months that each combined pair may be issued for operation may not exceed 12 months for each calendar year.

(b) If the location, design, and construction of a hotel may require more than one private club location within the hotel to serve the public convenience, the commission may authorize as many as three private club locations within the hotel under one license if the hotel has a minimum of 150 guest rooms and if all locations under the license are within the same hotel facility and on premises which are managed or operated and

owned or leased by the licensee. Facilities other than hotels may not have more than one private club location under a single private club liquor license.

(5) (a) A private club licensee's premises may not be established within 600 feet of any public or private school, church, public library, public playground, or park, as measured by the method in Subsection (6).

(b) A private club licensee premises may not be established within 200 feet of any public or private school, church, public library, public playground, or park, measured in a straight line from the nearest entrance of the proposed outlet to the nearest

property boundary of the public or private school, church, public library, public playground, or park.

(c) The restrictions contained in Subsections (a) and (b) govern unless one of the following exemptions applies:

(i) The commission finds after full investigation that the premises are located within a city of the third class or a town, and compliance with the distance requirements would result in peculiar and exceptional practical difficulties or exceptional and undue hardships in the granting of a private club license. In that

event, the commission may, after giving full consideration to all of the attending circumstances, following a public hearing in the city or town, and where practical in the neighborhood concerned, authorize a variance from the distance requirements to relieve the difficulties or hardships if the variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this title.

(ii) With respect to the establishment of a private club licensee in any location,

the commission may, after giving full consideration to all of the attending circumstances, following a public hearing in the county, and where practical in the neighborhood concerned, reduce the proximity requirements in relation to a church if the local governing body of the church in question gives its written approval.

(iii) Any on-premises beer retailer licensee existing on March 1, 1990, need not comply with the restrictions contained in Subsections (a) and (b) if it applies for a private club liquor license before January 1, 1991.

(6) With respect to any public or private school, church, public library, public playground, or park, the 600 foot limitation is measured from the nearest entrance of the outlet by following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of the public or private school, church, public library, public playground, or park.

(7) Nothing in this section prevents the commission from considering the proximity of any educational, religious, and recreational facility, or any other relevant factor in reaching a decision on whether to issue a private club liquor license. For purposes of this subsection, "educational facility"

includes nursery schools, infant day care centers, and trade and technical schools.

32A-5-102. Application and renewal requirements.

(1) A person seeking a private club liquor license under this chapter shall file a written application with the department, in the name of an officer or director of a corporation, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable $1,000 application fee;

(b) an initial license fee of $750, which is refundable if a license is not granted;

(c) written consent of the local authority;

(d) a copy of the applicant's current business license;

(e) evidence that the applicant is a corporation or association organized under the Utah Nonprofit Corporation and Cooperative Association Act and is in good standing;

(f) evidence of proximity to any public or private school, church, public library, public playground, or park, and if the proximity is within the 600 foot or 200 foot limitations of Subsection 32A-5-101(5),(6), and (7), the application shall be processed in accordance with those subsections;

(g) evidence that the applicant operates a club where a variety of food is prepared and

served in connection with dining accommodations;

(h) a bond as specified by Section 32A-5-106;

(i) a floor plan of the club premises, including consumption areas and the area where the applicant proposes to keep and store liquor;

(j) evidence that the club is carrying public liability insurance in an amount and form satisfactory to the department;

(k) evidence that the club is carrying dramshop insurance coverage of at least $100,000 per occurrence and $300,000 in the aggregate;

(l) a copy of the club's articles, bylaws, house rules, and

any amendments to those documents, which shall be kept on file with the department at all times;

(m) a signed consent form stating that the club and its management will permit any authorized representative of the commission, department, council, or any law enforcement officer unrestricted right to enter the club premises;

(n) a signed consent form authorizing the department to obtain Internal Revenue Service tax information on the club;

(o) a signed consent form authorizing the department to obtain state and county real and personal property tax information on the club;

(p) profit and loss statements for the previous fiscal year and pro forma statements for one year if the applicant has not previously operated; and

(q) any other information, documents, and evidence the department may require by rule or policy to allow complete evaluation of the application.

(2) (a) Each application shall be signed and verified by oath or affirmation by an executive officer or any person specifically authorized by the corporation or association to sign the application, to which shall be attached written evidence of said authority.

(b) The applicant may attach to the application a verified copy

of a letter of exemption from federal tax, issued by the United States Treasury Department, Internal Revenue Service, which the commission may consider as evidence of the applicant's nonprofit status. The commission may also consider the fact that the licensee has lost its tax exemption from federal tax as evidence that the licensee has ceased to operate as a nonprofit corporation.

(3) (a) The commission may refuse to issue a license if it determines that any provisions of the club's articles, bylaws, house rules, or amendments to any of those documents are not reasonable and consistent with the declared nature

and purpose of the applicant and the purposes of this chapter.

(b) Club bylaws shall include provisions respecting the following:

(i) standards of eligibility for members;

(ii) limitation of members, consistent with the nature and purpose of the corporation or association;

(iii) the period for which dues are paid, and the date upon which the period expires;

(iv) provisions for dropping members for the nonpayment of dues or other cause; and

(v) provisions for guests or visitors, if any, and for the issuance and use of visitor cards.

(4) All private club liquor licenses expire on June 30 of each year. Persons desiring to renew their private club liquor license shall submit a renewal fee of $750 and a completed renewal application to the department no later than May 31. Failure to meet the renewal requirements shall result in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form as prescribed by the department.

32A-5-103. Qualifications -- Club organization and stock structure.

(1) Any club or association seeking a private club liquor license shall meet the following qualifications:

(a) Each member shall own one share of stock and no member or other person shall own or control, directly or indirectly, more than one share.

(b) At least 35% of the total number of outstanding shares shall be of a class that entitles each holder of that class to full voting rights and, upon liquidation, to an equal share of the equity of the corporation.

(c) If there is more than one class of outstanding stock, the total number of outstanding shares

of the classes entitled to vote and share in the equity shall be at least 35% of the total number of outstanding stock of all classes.

(d) The voting stock of the club shall be subject to assessment for obligations of the club.

(e) The club shall be managed and operated by a governing board, which consists of at least five individuals, each of whom is a shareholder or voting member of the club and is elected by the holders of shares or members entitled to vote.

(f) The club shall post proper notice of all elections in a conspicuous place within the club premises not less than ten working days prior to the election.

(2) (a) in lieu of the requirements of subsections (1)(a), (b), and (c), a corporation having no authorized, issued, or outstanding stock shall have at least 75% of all members as voting members with one vote each.

(b) Upon dissolution or sale of. the corporation, either:

(i) each voting member shares equally in the equity; or

(ii) the assets revert to a national nonprofit organization that originally chartered the Utah corporation whose bylaws require that the assets be distributed, after payment of debts, either immediately or after a period

of time not exceeding ten years during which period the assets are held in trust, to a charitable organization or fund, or a nonprofit corporation qualified under this chapter.

(c) The voting members of any club qualifying under this subsection shall be subject to assessment for obligations of the club to the extent of unpaid membership fees, unless the membership has been previously terminated.

(3) The commission may not grant a private club liquor license to a club whose proprietor, officer, director, or managing agent has been:

(a) convicted of a felony under any federal or state law;

(b) convicted of any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages; or

(c) convicted of any crime involving moral turpitude.

(4) If any employee, proprietor, officer, director, or managing agent of a private club licensee is convicted of any offense designated in Subsection (3), the commission may take emergency action by immediately revoking the license according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(5) Upon the arrest of any proprietor, officer, director, or managing agent of a private club liquor licensee on any charge set forth in Subsection (3), the director may take emergency action by immediately suspending the operation of the licensee for the period during which the criminal matter is being adjudicated.

(6) (a) (i) The commission may not grant a private club liquor license to any corporate applicant who had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) This proscription also applies if any managing agent, officer, or director of the applicant is or was a

partner or managing agent of any partnership, or is or was a managing agent, officer, director, or a stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had a liquor license, agency, or permit revoked within the last three years.

(b) The corporate applicant may not be granted a license if any managing agent, officer, or director of the applicant had a liquor license, agency, or permit revoked while acting in his individual capacity within the last three years.

(7) If any person or entity to whom a license has been issued under this chapter no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

32A-5-104. Commission and department duties before granting licenses.

(1) Before a private club liquor license may be granted by the commission, the department shall conduct an investigation and may hold public hearings for the purpose of gathering information and making recommendations to the commission as to whether or not a license should be granted. The information shall be forwarded to the commission to aid in its determination.

(2) Before issuing any private club liquor license, the commission shall:

(a) determine that the applicant has complied with all basic qualifications and requirements for making application for a license as provided by Sections 32A-5-102 and 32A-5-103, and that the application is complete;

(b) consider the locality within which the proposed private club liquor outlet is located including, but not limited to:

(i) physical characteristics such as condition of the premises, square footage, and parking availability; and

(ii) operational factors such as tourist traffic, proximity to and density of other state stores, package agencies, and licensed outlets, demographics, population to be served, and the extent of and proximity to any school, church, public library, public playground, or park;

(c) consider the applicant's ability to manage and operate a private club liquor license, including but not limited to, management experience, past retail liquor experience, and the type of management scheme employed by the private club;

(d) consider the nature or type of private club operation of the proposed liquor licensee, including but not limited to, the type of menu items offered and emphasized, the hours of operation, the seating capacity of the facility, and the gross sales of food items; and

(e) consider any other factor or circumstance it considers necessary.

32A-5-105. Utah Nonprofit Corporation and Cooperative Association Act applicable Exceptions.

(1) The Utah Nonprofit Corporation and Cooperative Association Act is applicable to private club nonprofit corporations and associations. These corporations and associations enjoy the

powers and privileges and are subject to the duties, restrictions, and liabilities of other nonprofit corporations. This chapter takes precedence in the event of any conflict with the Utah Nonprofit Corporation and Cooperative Association Act.

(2) Three or more individuals may incorporate a private club nonprofit corporation or association by filing articles of incorporation with the Division of Corporations and Commercial Code that meet requirements of the Utah Nonprofit Corporation and Cooperative Association Act. These articles shall also contain a statement that:

(a) the private club is a bona fide club or association, the object of which is not pecuniary profit;

(b) the private club is organized with actual participating members;

(c) the private club will not be used for permitting gambling or any other violation of law or ordinance;

(d) no member of the club or any of its officers, directors, or trustees is under 21 years of age; and

(e) one of the purposes for which the corporation has been organized is for obtaining a license from the commission for the storage, sale, service, or consumption of liquor.

(3) The Division of Corporations and Commercial Code shall issue a corporate charter to a private club

nonprofit corporation or association organized under this chapter only upon receipt of an endorsed affidavit from the department stating that a true and complete copy of the articles of incorporation have been delivered to the department and that the articles meet the requirements of the department as established by this chapter and the rules of the commission.

(4) Any persons knowingly incorporating under this chapter with the object of pecuniary profit, and all persons having possession of any charter issued under this section, but revoked by the Division of Corporations and Commercial Code, who refuse upon demand to deliver the charter so revoked, are guilty of a class B misdemeanor.

32A-5-106. Bond.

(1) Each private club liquor licensee shall post a cash or corporate surety bond in the penal sum of $10,000 payable to the department, which the licensee has procured and must maintain for so long as the licensee continues to operate as a private club liquor licensee.

(2) The bond shall be in a form approved by the attorney general, conditioned upon the licensee's faithful compliance with this title and the rules of the commission.

(3) If the $10,000 corporate surety bond is canceled due to the licensee's negligence, a $300 reinstatement fee may be assessed. No part of any cash or corporate bond so posted may be withdrawn during the

period the license is in effect, or while revocation proceedings are pending against the licensee. A bond filed by a licensee may be forfeited if the license is finally revoked.

32A-5.107. Operational restrictions.

Each corporation or association granted a private club liquor license and its employees, officers, managing agent, and members shall abide by the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Each private club shall hold regular meetings as required by its articles or bylaws and conduct its

business through regularly elected officers. Within ten days following the election of any officer, the department shall be notified in writing of the officer's name, address, and office to which the officer has been elected, and the term of that office.

(2) Each private club may admit members only on written application signed by the applicant, following investigation and approval of the governing body. Admissions shall be recorded in the official minutes of a regular meeting of the governing body and the application, whether approved or disapproved, shall be filed as a part of the official records of the licensee. An applicant may not be accorded the privileges of a member until a quorum of the governing body has formally voted

upon and approved the applicant as a member. An applicant may not be admitted to membership until seven days after the application is submitted.

(3) Each private club shall maintain a current and complete membership record showing the date of application of each proposed member, the member's address, the date of admission following application, and the date initiation fees and dues were assessed and paid. The record shall also show the serial number of the membership card issued to each member. A current record shall also be kept indicating when members were dropped or resigned.

(4) Each private club shall establish in the club bylaws initial fees and monthly dues, as established by

commission rules, which are collected from all members.

(5) Each private club may allow guests or visitors to use the premises only when previously authorized by a member. A member is responsible for all services extended to guests and visitors. If the guest or visitor is a member of the same fraternal organization as the private club liquor licensee, no previous authorization is required.

(6) Each private club shall limit the issuance of visitor cards for a period not to exceed two weeks and assess and collect a fee from each visitor of not less than $5 for each two-week period the visitor card is issued. One dollar of every visitor card fee shall be remitted quarterly to

the department for the administration of this title. A current record of the issuance of each card shall be maintained and shall contain the name of the member sponsoring the visitor.

(7) A private club may not sell alcoholic beverages to any person other than a member, guest, or visitor who holds a valid visitor card issued under Subsection (6).

(8) A person who is under 21 years of age may not be a member, officer, director, or trustee of a private club.

(9) An employee of a club, while on duty, may not consume an alcoholic beverage, be under the influence of alcoholic beverages, sponsor a person for visitor privileges, or act as a host for a guest.

(10) A visitor to a club may not host more than five guests at one time.

(11) Each private club shall maintain an expense ledger or record showing in detail all expenditures separated by payments for malt or brewed beverages, liquor, food, detailed payroll, entertainment, rent, utilities, supplies, and all other expenditures. This record shall be kept in a form approved by the department and balanced each month. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda. All invoices and receipted bills for the current calendar or fiscal year documenting purchases made by officers of the club for the benefit of the club shall also be maintained.

(12) Each private club shall maintain a bank account that shows all income and expenditures as a control on the income and disbursements records. This account shall be balanced each month under the direction of the treasurer or other officer of the licensee.

(13) Each private club shall maintain a minute book that is posted currently by the secretary. This record shall contain the minutes of all regular and special meetings of the governing body and all committee meetings held to conduct club business. Membership lists shall also be maintained.

(14) Each private club shall maintain current copies of the club's articles of incorporation, current bylaws, and current house rules. Changes

in the bylaws are not effective unless submitted to the department within ten days alter adoption, and become effective 15 days alter received by the department unless rejected by the department before the expiration of the 15-day period.

(15) Each private club shall maintain accounting and other records and documents as the department may require.

(16) Any club or person acting for the club, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the club required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission,

council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the club's license and possible criminal prosecution under Chapter 12.

(17) Each private club shall maintain and keep all the records required by this section and all other books, records, receipts, and disbursements maintained or utilized by the licensee, as the department requires, for a minimum period of three years. All records, books, receipts, and disbursements are subject to inspection by authorized representatives of the commission, department, and council. The club shall allow the department, through its auditors or examiners, to audit all records of the club at times the department considers

advisable. The department shall audit the records of the licensee at least once annually.

(18) Each private club shall make available to the department, upon request, verified copies of any returns filed with the United States Treasury Department, Internal Revenue Service, under the federal Internal Revenue Code. Failure to provide any returns and supporting documents upon reasonable request by the department or, alternatively, to provide evidence of an extension granted by the Internal Revenue Service, constitutes sufficient grounds for the commission to suspend or revoke a license. Any return or copy of a return so filed with the department is confidential and may not be used in any manner not directly connected with the

enforcement of this title, nor may it be disclosed to any person or any department or agency of government, whether federal, state, or local.

(19) Each private club shall own or lease premises suitable for its activities in its own name. A copy of the lease shall be filed with the department.

(20) Each private club shall operate the club under the supervision of a manager or house committee, appointed by the governing body of the club.

(21) A private club may not maintain facilities in any manner that barricades or conceals the club operation. Any member of the commission, authorized department personnel, member of the council, or any

peace officer shall, upon presentation of credentials, be admitted immediately to the club and permitted without hindrance or delay to inspect completely the entire club premises and all books and records of the licensee, at any time during which the same are open for the transaction of business to its members.

(22) A private club may not pay any person or entity any fee, salary, rent, or other payment of any kind in excess of the fair market value for the service rendered, goods furnished, or facilities or equipment rented. It is the intention of this subsection to insure that no officer, managing agent, employee, or other person derives a principal economic benefit from the operation of a club.

(23) A private club may not engage in any public solicitation or public advertising calculated to increase its membership.

(24) Each private club shall abide by the following operational restrictions:

(a) The liquor storage and sales area shall remain locked at all times when it is not open for business.

(b) Liquor may not be purchased by a private club liquor licensee except from state stores or package agencies. Liquor so purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in

accordance with rules established by the commission.

(c) Beginning July 1, 1991, a private club liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(i) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(A) the beverage shall contain liquor from a lawfully purchased container;

(B) the secondary ingredient is not the only liquor in the beverage;

(C) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(D) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(ii) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(iii) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(iv) heavy beer may be served in standard containers not exceeding one liter.

(d) (i) Private clubs licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-

premise beer retailer license from the commission.

(ii) Private clubs licensed under this chapter that sell beer pursuant to Subsection (i) shall comply with all appropriate operational restrictions under Title 32A, Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(iii) Failure to comply with the operational restrictions under Title 32A, Chapter 10, as set forth in

Subsection (ii) may result in a suspension or revocation of the private club's state liquor license and its alcoholic beverage license issued by the local authority.

(e) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(f) A private club may not charge for the service or supply of glasses, ice, or mixers unless the charges are fixed in the house rules of the club and a copy of the rules is kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.

(g) Minors may not be employed by any club to sell, dispense, or handle any alcoholic beverage.

(h) An officer, director, managing agent, employee, and any other person employed by or acting for or in behalf of any licensee, may not sell, deliver, or furnish, or cause or permit to be sold, delivered, or furnished any liquor to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(i) (i) Liquor may not be sold or offered for sale at any private club during the following days or hours:

(A) on the day of any state or national election until after the polls are closed;

(B) on the day of any local election if closure is required by local ordinance; and

(C) on Sunday and any state or federal legal holiday after 12 midnight and before 12 noon.

(ii) The hours of beer sales are those specified in

Chapter 10 for on-premise beer licensees.

On all other days the liquor storage and sales area in the club shall be closed from 1 am. until 10 am.

(k) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(l) Beginning July 1, 1991, no more than one ounce of primary liquor may be served to a member, guest, or visitor at a time, except wine as provided in Subsection (c)(iii) and heavy beer as provided in Subsection (c)(iv).

(m) (i) Beginning January 1, 1991, a person may not bring onto

the premises of a private club liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any private club liquor licensee and consume wine pursuant to Subsection (n).

(ii) Beginning January 1, 1991, a private club or its officers, managers, employees, or agents may not allow a person to bring onto the private club premises any alcoholic beverage for on-premise consumption, except cork-finished wine under Subsection (i).

(iii) Beginning January 1, 1991, if any private club licensee or any of its officers, managers, employees, or agents violates this subsection:

(A) the commission may immediately suspend or revoke the private club's liquor license and the private club licensee is subject to criminal prosecution under Chapter 12; and

(B) the local authority may immediately suspend or revoke the private club's local liquor license, local consent

under Subsection 32A-5-102(1)(c), or local business license.

(n) A wine service may be performed and a service charge assessed by the private club as authorized by commission rule for wine purchased at the private club or carried in by a member, guest, or visitor. If wine is carried in by a member, guest, or visitor, the member, guest, or visitor shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(o) A member, guest, or visitor to a club may not carry from a club premises an open container used primarily for

drinking purposes containing any alcoholic beverage.

(p) Each private club liquor licensee shall display in a prominent place in the private club:

(i) the private club liquor license that is issued by the department;

(ii) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(iii) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous

to your health and the safety of others."

(q) The following acts or conduct in a private club licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(i) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(ii) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (i);

(iii) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(iv) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(v) permitting any person to use artificial devices or

inanimate objects to depict any of the prohibited activities described in this subsection;

(vi) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(vii) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(A) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual

acts prohibited by Utah law;

(B) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(C) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection; or

(D) scenes wherein a person displays the vulva or the anus or the genitals.

(r) Nothing in Subsection (q) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (q).

(s) (i) Although live entertainment is permitted on the premises of a club liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a

designated area approved by the commission.

(ii) Nothing in Subsection (i) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (i).

(25) (a) A private club may not close or cease operation for a period longer than 240 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the private club and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include the dates of closure or cessation of operation, the reason for the closure or. cessation of.operation, and the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to

closure or cessation of operation shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the club's license fee for the remainder of the license year.

(26) Each private club shall conduct its affairs so that it is not operated for a pecuniary profit.

(27) A private club may not transfer a private club liquor license

from one location to another, without prior written approval of the commission.

(28) A person, having been granted a private club liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license, whether for monetary gain or not. A private club liquor license has no monetary value for the purpose of any type of disposition.

Indeed, the factors which plaintiff identifies as "proving" that the Lodge is a business establishment are actually only proof that the Lodge performs some services to its members which are incidental to its overall purpose of fraternal socialization and charitable endeavor. The fact that those purposes are better effectuated in a comfortable club house, with some food and with some alcoholic beverages, does not convert the Lodge into a business.

POINT IV.

ENFORCEMENT OF THE UTAH CIVIL RIGHTS ACT AGAINST THE LODGE WOULD VIOLATE THE RIGHT OF LODGE MEMBERS TO FREE ASSOCIATION GUARANTEED UNDER THE FIRST AMENDMENT.

The U.S. Supreme Court has on various occasions recognized that members of private Organizations have rights of free association under the

THE SUPREME COURT OF
THE STATE OF UTAH

SANDRA BEYNON, Plaintiff/Appellant	)	Case No. 91-0551
vs.	)	
ST. GEORGE-DIXIE LODGE #1743 BENEVOLENT AND PROTECTIVE ORDER OF ELKS, Defendant/Appellee.	)	Priority No. 16 (Case Below # 90-050-3229)

JURISDICTION

This Court has jurisdiction to consider this appeal pursuant to Utah Code Ann. § 78-2-2(3)(j) (Supp. 1992).

ISSUES ON APPEAL

1. Did the trial court correctly conclude that the Elks Lodge does not fall within the scope of the Utah Civil Rights Act?

2. If the Elks Lodge does fall within the scope of the Utah Civil

Rights Act, does the Act violate the constitutional right of free association guaranteed to lodge members under the United States and Utah Constitutions?

The principal and indeed the only major source of detailed information concerning nonprofit American membership organizations of a national scope will be found in Gale's *Encyclopedia of Associations*.

There are more than 36,000 various associations, societies, fraternal and patriotic organizations, and other types of groups consisting of voluntary members.

Research reveals that many of these groups limit their membership on the grounds of race, religion, sex or national origin, either by their membership qualifications or by the practices Of the members. A listing of these follows, and wherever possible the date of the founding of the

organization and approximate number of members are given.

Non-member organizations, trade and business groups, agricultural, scientific, educational, governmental and public administration, military and naval organizations, social welfare, health and medical, public affairs, horticultural, hobby and avocational, athletic and sports organizations, labor unions and Chambers of Commerce have been eliminated from the lists prepared for the Court in this brief.

There is a definite overlapping of the categories set forth. No organization is listed more than once, even though it might conceivably fall in more than one classification.

The Court could well take judicial notice of the fact that many persons

are members of more than one organization. We find that Elks are also members, for example, of religiously oriented groups such as B'nai B'rith and Jewish War Veterans, Knights of Columbus and Catholic War Veterans, the Masons and American Legion and Veterans of Foreign Wars, as well as the Friendly Sons of St. Patrick, Sons of Italy, Sons of Norway, the Swedish Club, the Polish National Alliance and many other Organizations with "mutual heritage in national origin."

Those organizations having selective membership qualifications or practices limited to Jewish have been listed under the combination of Race and Religion, but the Court's attention is directed to pages 50-82 of

Appellant's Brief, where this problem is more fully discussed. We do not profess to be more learned than others in resolving this problem, but rather, have arbitrarily selected this classification while being well aware of its complexity.

B. Organizations That Have Selective Membership Qualifications or Practices Based Upon:

1. Race, Religion and Sex:

Ancient Egyptian Arabic Order Nobles of the Mystic Shrine
(32nd Degree Masons)
F. 1893--M. 20,000

Ancient Egyptian Order of Sciots (AEOS)
(Blue Lodge Masons)
F. 1911--M. 3,000

Benevolent and Protective Order of Elks of the United States of America (BPOE)
F. 1668--M. 1,520,731
(In all States of U.S., as well as Guam, Panama Canal Zone, the Philippines and Puerto Rico)
State Associations:
48--Subordinate Lodges: 2,164

B'nai B'rith Women (Jewish) (BBW)
F. 1897--M. 135,000
Local groups: 915

Convent General of the Knights York Cross of Honour (Honorary degree conferred on Freemasons)
F. 1930--M. 8,100
State/Province Priories: 64

Daughters of the Nile, Supreme Temple
(Mothers, wives, sisters, daughters and widows of Shriners)
F. 1913--M. 71,000
Local groups: 129

Degree of Pocahontas, Improved Order of Red Men
(Women's auxiliary of IORM)
F. 1888--State groups: 40

Fraternal Order of Eagles, Ladies Auxiliaries
F. 1927--M. 175,000
State groups: 36--Local groups: 1,310

General Conference of Grand Courts Heroines of Jericho, Prince Hall Affiliation, U.S.A.
(Women's auxiliary to General Grand Conference Holy Arch Masons of America--affiliated with National Council of Negro Women)
F. 1922--M. 20,500

General Grand Chapter, Order of the Eastern Star
F. 1870--M. 3,000,000

Grand Aerie, Fraternal Order of Eagles (FOE)
F. 1898--M. 825,000
State groups: 50--Local Aeries: 1,600

Great Council of U.S. Improved Order of Red Men
(Fraternal society of white American citizens)
F. 1765--M. 70,000
State groups: 52-Local groups: 1,442

Hadassah, The Women's Zionist Organization of America (Jewish)
F. 1912--M. 300,000
Local groups: 1,300

Improved Benevolent and Protective Order of Elks of the World (IBPOEW)
F. 1898--M. 450,000 (estimated)
Local groups: 1,500

Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine for North America (AAONMS)
F. 1872--M. 863,065
Local Shrine Temples: 170

International Order of Job's Daughters, Supreme Guards Council
(Girls between ages of 12 and 20 who are related to Master Masons)
F. 1926--M. 150,000
State and Regional Councils: 46

Jewish War Veterans of the U.S.A.--
National Ladies Auxiliary Knights Of
the Golden Eagle (KGE)
F. 1873--M. 20,000
State groups: 5--Local
Chapters: 126

Knights of Pythias
F. 1866--M. 200,000
State groups: 55--Local
groups: 2,000

Knights of Peter Claver (KPC)
(Fraternal society of Negro Roman
Catholic men)
F. 1900--M. 17,000
State groups: 6--Local groups:
250

Knights Templar, Grand Encampment,
U.S.A. (Masonic Order)
F. 1816--M. 386,000

Loyal Orange Ladies Institution
F. 1876--M. 2,443
State and local Lodges: 80

Loyal Order of Moose (LOM)
F. 1888--M. 1,096,070
State groups: 36--Local Lodges
and Chapters: 3,860

Ladies Oriental Shrine of North America
(LOS of NA)
F. 1914--M. 24,000

Masonic Service Association of the
United States (MSA)
F. 1919--M. 43

Mizrachi Women's Organization Of. America (Jewish) (MWOA)
F. 1925--M. 50,000
Regional groups: 9--Community Councils: 10
Chapters: 330

National Association Legions of Honor (NALOH) (Shrine)
F. 1931--M. 10,000 (estimated)
Shrine Temple Units: 50

National Black Sisters Conference (NBSC)
F. 1968--M. 200

National Federation of Buddhist Women's Associations
F. 1952--M. 7,000

National Federation of Jewish Men's Clubs (NFJMC)
F. 1920--M. 55,000
Local groups: 365

National Federation of Temple Brotherhoods (Jewish) (NFTB)
F. 1923--M. 65,000
Regional Councils: 16--Local Brotherhoods: 460

National Federation of Temple Sisterhoods (Jewish) (NFTS)
F. 1913--M. 100,000
Districts: 15--Local Sisterhoods: 620

National League of Masonic Clubs (NLMC)
F. 1905

National Sojourners
(Past or present commissioned officers and warrant officers of uniformed forces of U.S. who are Master Masons)
F. 1918--M. 10,443
Local Chapters: 210

National Women's League of the United Synagogue of America (Jewish) (NWL)
F. 1917--M. 200,000
Regional branches: 28--Local Sisterhoods: 765

Order of the Golden Chain
(Female relatives of Masons and Master Masons)
F. 1929--M. 10,000
National Links: 39

Order DeMolay
F. 1919--M. 165,000 (1965)

Order of the White Shrine of Jerusalem
(Primarily women relatives of Master Masons)
F. 1909--M. 180,303
Shrines: 846

Philalethes Society (Masonic)
F. 1928

Pioneer Women, The Women's Labor Zionist Organization of America (Jewish)
F. 1925--M. 45,000
Councils: 31-Local clubs: 500

Prince Hall Mason
(Negro Masonry)
F. 1787--M. 312,000
In 35 States, Canada, Liberia and Nassau

Royal Order of Scotland (Masonic) (ROS)
F. .....--M. 3,200

Sons of Jewish War Veterans of the United States of America

Supreme Assembly, International Order of Rainbow for Girls (SAIORG)
(Ritual based on 9th chapter of Genesis)
F. 1922--M. 1,300,000
Local assemblies: 1,900

Supreme Caldron, Daughters of Mokanna (D of M)
(Order for women relatives of Mystic Order Veiled Prophets of the Enchanted Real members)
F. 1919--M. 8,088
Subordinate Caldrons: 57

Supreme Council 33 Ancient and Accepted Scottish Rite Freemasonry (Southern Masonic Jurisdiction)
F. 1801--M. 530,000
Consistories: 207

Supreme Count Ancient and Accepted Scottish Rites of Freemasonry (Northern Masonic Jurisdiction) (AASR.NMJ)
F. 1813--M. 510,938
State groups: 15--Local groups: 118

Supreme Council, Mystic Order Veiled Prophets of Enchanted Realm (MOVPER)
(Fraternal fun Order for Blue Lodge Masons)
F. 1890--M. 100,000
State groups: 18--Local
Grottoes: 198

Supreme Council of the Royal Arcanum (SCRA)
(Fraternal benefit life insurance society)
F. 1877--M. 38,000
State groups: 25--Local
groups: 330

Supreme Emblem Club of the United States
(Women relatives of members of B.P.O.Elks)
F. 1926--M. 40,000
State Associations: 12--Local
Clubs: 448

Supreme Temple Order Pythian Sisters
(Knights of Pythias)
F. 1888--M. 95,000
State groups: 46--Local
groups: 1762

Tall Cedars of Lebanon
(Master Masons)
F. 1902--M. 50,000 (1965)
Forests: 100

United Order True Sisters (Jewish) (UOTS)
F. 1846--M. 13,000
Chapters: 48

Universal Craftsmen Council of Engineers (UCCE)
(Masonic)
F. 1903--M. 4,790
State groups: 40--Local groups: 2

2. Race and Religion:

Black American Baptist Churchmen (BABC)
F. 1968--M. 327

Catholic Interracial Council of New York Ku Klux Klan
F.: First Klan: 1865; Second Klan: 1915;
Third Klan: 1954

National Committee of Black Churchmen (Civil Rights)
F. 1966--M. 250
Regional groups: 5

National Negro Evangelical Association
F. 1963--M. 20,000

Order of Amaranth (O of A)
(Masons and their wives, mothers, daughters, widows and sisters)
F. 1873--M. 95,231
State groups: 35

Royal Neighbors of America (RNA)
(White men and women-Bible readings, prayers)
F. 1895--M. 390,263
State groups: 44--Local groups: 6,257

Sons and Daughters of Liberty
(White, native born Protestants)
F. 1915

Union of Black Clergy and Laity of the Episcopal Church (UBCL)
F. 1968--Local Chapters: 15

3. Race and Sex:

Acacia
(Sons and brothers of Masons; young men recommended by Masons)
F. 1904-M. 22,000 (1965)

American Fraternal Union (AFU)
F. 1898-M. 25,016
State groups: 142

Ancient Mystic Order of Samaritans (AMOS)
(Fun Order of Independent Order of Old Fellows)
F. 1902--M. 5,953

Chinese Women's Association (CWA)
F. 1932-M. 460

Girl Friends, Inc.
(Negro professional women)
F. 1927--M. 500 (est.)
Chapters:25

Imperial Court, Daughters of Isis
(Fraternal and charitable organization of women)
F. 1910--M. 7,000
Local groups: 145

Independent Order of Odd Fellows (IOOF)
F. 1819--M. 1,200,000

International Association of Rebekah Assemblies, IOOT (IARA)
(Women's auxiliary to IOOF

Maccabees, The (TM)
F. 1878--M. 263,841
Lodges: 797

Modern Woodmen of America (MWA)
(Fraternal benefit life insurance society)
F. 1883--M. 450,000
Local camps: 3,000

National Association of College Women (NACW)
F. 1923--M. 1,300
Local groups: 52

National Association of Colored Women's Clubs (NACWC)
F. 1896--M. 100,000
State groups: 42--Local Clubs: 2,000

National Society Colonial Dames XVII Century
F. 1915--M. 5,200
State groups: 32--Local groups: 153

National Women's Relief Corps, Auxiliary to the Grand Army of the Republic
F. 1883--M. 34,000
State Departments: 33--Local Corps: 830

Order of United Commercial Travelers of America
(Fraternal benefit organization)
F. 1888--M. 248,000
Regional groups: 32--Local groups:

United Daughters of the Confederacy (UDC)
F. 1894--M. 35,000
Local groups: 1,000

4. Race:

(a) Black and Indian

African Nationalist Pioneer Movement (ANPM)
F. 1941

Afro-American Patrolmen's League (AAPL)
F. 1968--M. 1,200

Association of Interracial Marriages (AIM)
F. 1969--M. 40

Biafra Students Association in the Americas
F. 1967--M. 3,000
Local branches: 50

National Black Anti-War Anti-Draft Union (NBAWADU)
F. 1967

National Conference of Black Elected Officials (COBEO)
F. 1967--M. 1,500

North American Indian Association (NAIA)

F. 1940--M. 135

Pan African Students Organization in the Americas

F. 1961--M. 200

Tribal Indian Land Rights Association (TILRA)

F. 1960--M. 62,000
Local Chapters: 23

Universal African Nationalist Movement (UANM)

F. 1946--M. 4,000
State groups: 10--Local groups: 22

(b) Yellow

There are over 130 various Chinese clubs, associations or Tongs, of which very little is known. One writer has expressed it:

> "The greatest gap in information about secret societies is for the years since 1910. Much more investigation of the modern period is needed. Research on Chinese secret societies is impeded by the desire of the societies to conceal their true nature and by the general

suspicion and distrust with which researchers, especially white researchers, are regarded."[30]

It is not known what the by-laws of these groups are, but their membership practices are well defined.

The largest single family is probably the Wong family, with an estimated membership in the United States of 15,000 to 17,000.[31]

There are apparently 34 associations called the "Chinese Consolidated Benevolent Association,"

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[30]Lyman, Stanford M., *The Asian in the West-Social Science and Humanities Publication No. 4* (Western Studies Center, Desert Research Institute, University of Nevada System: Reno and Las Vegas, (1970)

[31]Kung, Stien-woo, *Chinese in American Life: Some Aspects of Their History, Status, Problems and Contributions* (University of Washington Press: Seattle, 1962), p. 222

with an estimated membership of 60,000.[32]

Gales' Encyclopedia of Associations, 6th Ed. (1970) does not list these organizations because they have been unable to obtain any information concerning either the date of their founding or the membership.

The following list was obtained only through a search, conducted locally, in the major cities of the United States. Some of these appear to be benevolent groups, as well as social; others appear to have some religious qualifIcations for membership, including Protestant, Catholic, Buddhist and others. Practically all are limited to male members only. However, in view of the

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[32]*Ibid*, p. 220

paucity of information, we have listed them all together in this category, which seems to be their basic membership qualification.

Chinese American Citizens Alliance

Chinese Laundry Association
F. 1933--M. 1,000

Chinese Women's Association
F. 19332-M. 460

Nippon Club (Japanese)
F. 1914--M. 1,722

Rho Psi
(Chinese fraternity)
F. 1916--M. 580

Bing Kong Tong

Chew Lun Association

Chew Lun Lin Yu Association

Chong Sen Benevolent Association

Chu Association

Chung Lee Club

Chung Yuen Club Inc.

Eng Family Benevolent Association

Eng Kuan Kai Associates

Gee How Oak Tien Association

G'Way Sen Association

Gee Tuck Tong Association

Hip Sing Association, Inc.

Hip Wah Hing

Ho Yuen Club

Hop Wo Benevolent Association

Hok San Society

Hoy On Association

Hoy Ping Benevolent Association

Hoy Sun Ning Yung Benevolent Association

Jack Sen Tong Association

Jan Ying Benevolent Association

Jungs Association

Kin Fook Association

Kong Chow Benevolent Association of Southern California, Inc.

Kow Kong Benevolent Association

Kuo Min Tong

Kwong Hoy Association, Inc.

Lee Association of Chicago

Lee Gin

Lee Onn Dong Association

Leong Chung How Association

Lim Family Association

Lum Sai Ho Association

Lung Kong Tin Yee Association

Mar Family Association

Mow Fong Young

Mon Sang Association

Moo Kai Association

Moy Shu Dung Kung Shaw

Ngi Yeh

Ning Kue Kung Wui Association

Oak Tin Association, Inc.

On Ping

Ong Ko Met Association

Quans Family Association

Sam Kiang Charitable Association

Sam Min Association

Sam Yick Benevolent Association

Sam Yup Benevolent Association

Sing Keong Association

Soo Yuen Benevolent Association

Suey Sing Tong

Sun We Association, Inc.

Tom Car Kung Soo

Tseng Sum Sing Association

Tsung Tsin Association

Tung Goon Association

Tuna Hwa Association

Tung On Association, Inc.

Tung Sen Association

Way Ben Association

Wong Family Benevolent Association

Woo Family Welfare Association

Yan Wo Benevolent Association

Yee Fong Toy Association

Yee Ying Association

Yep Family Association

Ying Fat Yuen, Inc.

Ying On Association, Inc.

Young Wo Association

5. Religion and Sex:

American Association of Jesuit Scientists (AAJS)
F. 1922--M. 300

American Association of Women Ministry (AAWM)
F. 1919-M. 300

American Baptist Women (ABW)
F. 1951--M. 500,000
State groups: 36--
Associations: 400
Local groups: 6,000

American Federation of Priests (Catholic) (AFP)
F. 1966--M. 31

American Lutheran Church Men
F. 1961--M. 70,000
Districts: 18--Conferences: 167
Local groups: 2,000

American Lutheran Church Women (ALCW)
F. 1960-M. 700,000
Districts: 18--Conferences: 160

Ancient and Illustrious Order Knights of Malta (AIOK of M)
(Fraternal benefit life insurance society of Protestant men)
F. 1842--M. 7,500
State groups: 5--Local groups: 60

Archconfraternity of Christian Mothers (Catholic)
F. 1881
Groups: 3,150--Local groups: 300

Brotherhood of St. Andrew (Episcopal)
F. 1883--M. 5,000
Chapters: 500

Catholic Association of Foresters (CAOF)
F. 1879--M. 44,428
Lodges: 302

Christian Brothers Education Association

(Catholic) (CEBA)
F. .....--M. 2,500

Church Women United
F. 1941--M. 10,000,000
State groups: 51--Local groups:
2,400

Catholic Central Union of America (CCUA)
F. 1855--M. 215,000
State groups: 8--Local groups: 321

Catholic Daughters of America (CDA)
F. 1903--M. 215,000
State groups. 50--Local groups: 1,500

Catholic Kolping Society of America
F. 1928--M. 1,500
Local groups: 13

Catholic Women's Benevolent Legion
F. 1895--M. 4,000

Christian Business Men's Committee International (CBMCI)
F. 1938--M. 15,000

Christian Service Brigade
F. 1937--M. 55,000 boys
14,000 adult leaders
Local units: 3,000

Columbian Squires
(International fraternity of Catholic High School boys)
F. 1925--M. 19,000
State groups: 56--Local groups: 750

Dames of Malta (D of M)
(Women's Christian fraternal organization)
F. 1896--M. 9,518

Daughters of Isabella, National Circle
(Catholic Women's organization)
F. 1897--M. 120,341

Daughters of the King (Episcopal)
F. 1885-M. 8,900
Local groups: 440

Eucharistic Guard for Nocturnal Adoration (Catholic)
F. 1938--M. 4,350
Local groups: 45

Full Gospel Business Men's Fellowship International (FGBMFI) (Glossolalia)
F. 1952--M. 10,000
Local groups: 600

Holy Name Society (Catholic)
F. 1274--M. 7,000,000 (estimated)

International Grail Movement (Catholic)
F. 1928

International Supreme Council of World Masons (ISC)
F. 1948--M. 24,000
U.S. groups: 50--Foreign groups: 32

Knights of Columbus (K of C)
F. 1882--M. 1,173,597
State groups: 63--Local groups: 5,588

Knights of St. John Supreme Commandery (Catholic fraternal organization)
F. 1886--M. 8,700
State groups: 9--Local groups: 170

Loyal Orange Association of British America (ORANGEMEN)
F. 1867 (first U.S. Lodge)

Lutheran Church Women (LCW)
F. 1962--M. 285,000

Lutheran Women's Missionary League (LWML)
F. 1942--M. 210,701
State groups: 40--Local groups: 5,870

National Association of Ministers Wives (NAMW)
F. 1941--M. 2,100
Local groups: 60

National Association Priest Pilots (Catholic) (NAPP)
F. 1964--M. 150
Regional groups: 5

National Catholic Women's Union (NCWU)
F. 1916--M. 30,000 (est.)
State groups: 12--Local groups: 259

National Council of United Presbyterian Men (NCUPM)
M. 400,000 (est.)

National Council of the Young Men's Christian Associations of the United States of America (YMCA)
F. 1839--M. 5,778,000
Regional Councils: 17-Local Associations: 1,839

National Women's Christian Temperance Union (WCTU)
F. 1874--M. 250,000
State groups: 60--Local groups: 6,000

National Womens' Missionary Society of the Church of God
F. 1932--M. 35,000
State group's: 50

Nocturnal Adoration Society (Catholic) (NAS)
F. 1903--M. 100,000
Local Centers: 754

Order of the Alhambra
(Catholic men)
F. 1904--M. 13,500 (1965)

Patriotic Order Sons of America (POSA)
F. 1847

P.E.O. Sisterhood
F. 1869

Russian Orthodox Catholic Women's Mutual Aid Society
F. 1907--M. 2,390
Lodges: 58

Society of African Missions (Catholic)
F. 1856--M. 1,667

Superior Council of U.S. Society of St. Vincent dePaul (Catholic)
F. 18333--M. 44,000
State groups: 46--Local group's: 4,900

Supreme Ladies Auxiliary Knights of St. John (Catholic)
F. 1900--M. 25,000 (estimated)
Local groups: 215

Wesleyan Service Guild (Methodist) (WSG)
F. 1921--M. 130,000
Regional groups: 94--Local groups: 5,847

Women in Community Service (Anti-Poverty) (WICS)
F. 1964-Local groups: 280

Women's International Religious Fellowship (WIRF)
F. 1959--M. 9

Young Ladies Institute (Catholic) (YLI)
F. 1887--M. 16,500 (estimated)
Branches: 162

Young Men's Institute (Catholic) (YMI)
F. 1883--M. 5,900
State groups: 65

Young Women's Christian Association of the United States of America(YWCA)
F. 1855--M. 2,395,000
Local Units: 6,700

6. Religion and Ethnic or National Origin:

American Lithuanian Catholic Federation Ateitis
F. 1910--M. 3,200
Local groups: 31

American Lithuanian Roman Catholic Organists Alliance
F. 1911--M. 50
Local Chapters: 5

American Romanian Orthodox Youth (AROY)
F. 1950--M. 800
Local Chapters: 31

Association Canado Americaine (ACA)
F. 1896--M. 30,359
State groups: 6--Local groups: 72

Association of Evangelicals for Italian Missions (Baptist)
F. 1968

Association of Lithuanian Catholic Students Ateitis (SAS)
F. 1899--M. 375
State and Regional groups: 5--Local groups: 11

Association of Yugoslav Jews in the U.S.A.
F.1942--M. 565

Ateitis Association of Lithuanian Catholic Intellectuals
F. 1920--M. 1,100
Local Chapters: 22

Catholic Workmen
F. 1891--M. 18,957
State groups: 12--Local groups: 141

First Catholic Slovak Union of the U.S.A, (FCSU)
F. 1890--M. 104,000
State groups: 19--Local groups: 1,260

Hungarian Catholic League of America
F. 1943--State groups: 15

Italian Catholic Federation Central Council (ICF)
F. 1924--M. 10,000 (estimated)
Local groups: 125

Knights of Lithuania (K of L)
(Fraternal society of Catholic men and women of Lithuanian descent)
F. 1913--M. 1,700
Local Councils: 44

Lithuanian American Roman Catholic Federation (LARCF)
F. 1906--Local branches: 140

Lithuanian Catholic Youth Association Ateitis
F. 1910--M. 1,200
Chapters: 36

Lithuanian Roman Catholic Alliance of America (LRCA)
F. 1889--M. 7,991
State groups: 163--Local groups: 7

National Alliance of Czech Catholics (NACC)
F. 1917--Local Parish groups: 450

National Union of Czechoslovak Protestants of America and Canada
F. 1940--M. 200
Regional groups: 5

Polish Beneficial Association (PBA)
F. 1900--M. 24,654
Local groups: 132

Slovenian Women's Union (SWU)
(Catholic women and children of Slovenian ancestry)
F. 1926--M. 13,000 (estimated)
State groups: 105--Local groups: 3

Sons and Daughters of Malta (Maltese)
(Catholic Maltese-Americans)
F. 1946--M. 246

Union of Polish Women in America (UPWA)
F. 1920--M. 9,379
District groups: 3--Local groups: 74

Union Saint-Jean-Baptiste D'Amerique
F. 1900--M. 58,242
Local Councils: 198

United Hungarian Jews of America (UHJA)
F. .....--M. 32,000 (estimated)

World Federation of Hungarian Jews (WFHJ)

7. Religion:

Action for Interracial Understanding (Catholic) (AIU)
F.1950--M. 2,500
Regional groups: 2--Local Chapters: 20

Agudath Israel of America (Jewish) (ALA)
F. 1921--M. 35,000
Local groups: 140

Ambassadors of Mary (Catholic)
F. 1940--M. 45,000

American Baptist Home Mission Societies
F. 1832

American Bible Society (ABS)
F. 1810--M. 500,000

American Biblical Encyclopedia Society (ABES)
F. 1930

American Catholic Correctional Chaplains Association
F. 1952--M. 585

American Church Union (Episcopal (ACU)
F. 1938--M. 10,912
Chapters: 68--Branches: 29

American Federation of Catholic Workers for the Blind (AFCWB)
F. 1965--M. 71

American Jewish Alternatives to Zionism (AJAZ)
F. 1969

American, Jewish Committee (AJC)
F. 1900--M. 39,500
Chapters: 84

American Ministerial Association (AMA)
F. 1920-M, 6,288
State groups: 43--Local groups: 101

American Scientific Affiliation (ASA)
(Persons subscribing to the Christian faith who are professional workers in all fields of natural and social sciences.)
F. 1941--M. 1,650
Regional Chapters: 12

Angelic Warfare Confraternity (Catholic)
F. 1727

Apostolate of Suffering (Catholic)
F. 1926

Archconfraternity of Perpetual Adoration (Catholic)
F. 1893--M. 10,130

Armenian Church Youth Organization of America (ACYOA)
F. 1946--M. 1,000
Local Chapters: 38

Associated Catholic Laymen's First Friday Clubs

Association of Catholic Teachers (ACT)
F. 1950--M. 1,000

Association for Jewish Demography and Statistics--American Branch
F. 1957--M. 75

Association of Orthodox Jewish Scientists
F. ....--M. 900
Local groups: 12

Association of Marian Helpers (Catholic) (AMH)
F. 1946--M. 455,000

Association of Romanian Catholic of America (ARCA)
F. 1948--M. 2,000
Local groups: 17

Baptist Bible Fellowship International (BBFI)
F. 1950-M. 1,000,000 (est.)

B'nai B'rith (Jewish) (BB)
(Jewish men, women and youth of good moral character.)
F. 1843--M. 500,000
State and Regional groups: 75
Local groups: 4,099

B'nai B'rith Youth Organization (Jewish) (BBYO)
F. 1924--M. 52,000
Local groups: 1,700

Bnai Zion (Jewish) (BZ)
(Fraternal benefit life insurance society of Jewish families.)
F. 1908--M. 24,000
State groups: 11--Local groups: 128

Bnei Akiva of North America (Jewish) (BA of NA)
(Religious Zionist youth movement.)
F. 1934--M. 6,000
Chapters: 30

Brith Abraham (Jewish)
(Fraternal organization of Zionists.)
F. 1887

Brith Sholon (Jewish)
(Jewish fraternal society for men and women 16 years of age and over.)
F.1905--M. 20,000
State groups: 3--Local groups: 128

Campus Crusade for Christ
F. 1951--M. 1,500

Canon Law Society of America (Catholic) (CLS)
F. 1939--M. 1,100 (est.)

Catholic Accountants Guild
F. 1947--M. 200

Catholic Aid Association
F. 1878--M. 66,320

Catholic Biblical Association of America (CBA)
F. 1936--M. 923
Local groups: 4

Catholic Campus Ministry Association (CCMA)
F. ....--M. 1,300

Catholic Family Life Insurance (CFLI)
F. 1868--M. 43,753
Local Chapters: 159

Catholic Knights Insurance Society
F. 1885

Catholic Knights of St. George (CKSG)
F. 1881--M. 16,000
State groups: 8--Local groups: 345

Catholic Institute of the Food Industry (CIFI)
F. 1946--M. 550

Catholic Institute of the Press (CIP)
F. 1944--M. 400

Catholic Order of Foresters
F. 1883--M. 183,918
State groups: 28--Local groups: 1,251

Catholic Total Abstinence Union of America (Alcohol)
F. 1872--M. 70,000

Catholics United for the Faith (CUF)
F. 1968--M. 8,500
Local Chapters: 26

Catholic Writers Guild of America (CWGA)
F. 1919--M. 200

Chinese Foreign Missionary Union (CFMU)
F. 1929--M. 10,000
Local groups: 18

Christian Crusade
F. 1948--Supporting families: 250,000 (est.)
State groups: 40

College Young Christian Students (Catholic) (YCS)
F. 1947--M. 2,000
Regional groups: 4

Committee of Concern (COC) - (Biracial organization of religious leaders, Catholic, Protestant and Jewish, in Mississippi.)
F. 1964

Committee of Southern Churchmen
F. 1964--M. 75

Conservative Baptist Association of America (CBAA)
F. 1947-M. 300,000
State groups: 32--Local groups: 8,
Members of 1,510 churches

Croatian Catholic Union of the U.S.A. (CCU)
F. 1921-M. 13,000 (est.)

Crusade for a More Fruitful Preaching and Hearing of the Word of God (Catholic)
F. 1938

Czech Catholic Union (CCU)
F. 1879--M. 6,612
Local Lodges: 55

Damien-Dutton Society (Catholic) (DDS)
(Religious leaders and laymen and women interested in aiding victims of leprosy.)
F. 1944--M. 12,000
State groups: 50--Local groups: 6

Defenders of the Christian Faith
F. 1925-M. 150,000

Family Communion Crusade (Catholic) (FCC) F. 1950

Federated Russian Orthodox Clubs (FROC)
F. 1927--M. 5,000
Regional groups: 12--Local Chapters: 170

Fellowship of Christian Athletes (FCA)
F. 1954

Franciscan Apostolate of the Way of the Cross (Catholic)

Gideons International (GI)
F. 1899--M. 28,000
State groups: 43--Local groups: 1,074

Greek Orthodox Youth of America (GOYA)
F 1951--M. 5,000
Districts: 13--Local Chapters: 150

Guild of Catholic Lawyers (GCL)
F. 1928--M. 800

Gustave Weigel Society (Ecumenical)
F. 1966--M. 250

Hashachar (Jewish)
(Organization for Jewish youth, ages 9 to 25.)
F. 1967--M. 10,000
Regional Divisions: 18

Hebrew Veterans of the War with Spain (Jewish) (HVWS)
F. 1896--M. 85

Ichred Habonim Labor Zionist Youth (Jewish)
F. 1934--M. 2,000
Local groups: 35

International Catholic Auxiliaries (ICA)
F. 1937--M. 250

International Catholic Deaf Association (ICDA)
F. 1949--M. 5,000
Local Chapters: 97

International Ministerial Federation (IMF)
F. 1935--M. 500

International Society of Christian Endeavor (ISCE)
F. 1881--M. 1,000,000 (est.)

International Walther League (Lutheran)
(Lutheran teenagers.)
F. 1893--M. 150,000
State and local groups: 5,000

Jewish Lawyers Guild
F. 1962--M. 250

Jewish War Veterans of the U.S.A. (JWV)
F. 1896--M. 105,000 (est.)

League of Prayer for Unity (Catholic)
F. 1949--M. 300,000

Liberal Religious Youth (Unitarian Universalist) (LRY)
F. 1953--M. 15,000
State groups: 35--Local groups: 400

Liturgical Arts Society (Catholic) (LAS)
F. 1928--M. 320

Loyal Christian Benefit Association (LCBA)
F. 1890--M. 63,000

Lutheran Benevolent Association (LBA)
F. 1926--M. 1,700

Lutheran Fraternities of America (LFA)
F. 1865--M. 6,763

Lutheran Laymen's League (LLL)
F. 1917--M. 155,000
State groups: 43--Local clubs: 2,000

Luther League
(Youth auxiliary of Lutheran Church in America)

Mizrachi Hatzair (Jewish)
(Religious Zionist organization for young people between ages of 10 and 26.)
F. 1952--M. 1,000
Local Chapters: 80

Movement for a Better World (Catholic) (MBW)
F. 1952--M. 200 (est.)

National Association of Laymen (Catholic) (NAL)
F. 1967--M. 13,000

National Campus Ministry Association
F. 1965

National Catholic Social Action Conference (NCSAC)
F. 1922--M. 500

National Catholic Society of Foresters (NCSF)
F. 1891--M. 90,651
Local groups: 718

National Catholic Pharmacists Guild of the United States (NCPG)
F. 1962--M. 350

National Conference of Shomrim Societies (Jewish) (NCSS)
(Police, fire and other public safety officers of the Jewish faith.)
F. 1954--M. 5,000
State groups: 3--Local groups: 9

National Conference of Synagogue Youth (Jewish) (NCSY)
F. 1954--M. 15,500
Regional groups: 17--Local Chapters: 350

National Council of Young Israel (Jewish) (NCYI)
F. 1912--M. 30,000
Local groups: 87

National Educators Fellowship (NEF)
F. 1953--M. 1,500

National Federation of Catholic Physicians Guilds (NFCPG)
F. 1932--M. 6,800
Local groups: 102

National Federation of Temple Youth (Jewish) (NFTY)
F. 1939--M. 30,000
Regions: 21--Local groups: 490

National Huguenot Society
F. ....--M. 4,600
State Societies: 37

National Religious Broadcasters (NRB)
F. 1944--M. 200 (est.)
Regional group: 1

National Spiritual Assembly of the Baha'is of the U.S.
F. 1927--Local Assemblies: 440

National Young Buddhist Association (NYBA)
F. 1948--M. 2,000
Local groups: 80

Nazarene World Missionary Society (NWMS)
F. 1915--M. 272,219
Districts: 78--Local groups: 4,599

Opus Dei (Catholic)
F. 1928--M. 50,000 (est.)

Overseas Missionary Fellowship (OMF)
F. 1888 (in North America)
M. 324 (in U.S. and Canada)
M. 859 (world)

Poale Agredath Israel of America (Jewish) (PAI)
M. 50,000

Presbyterians United for Biblical Concern (PUBC)
F. 1965--M. 800

Progressive Order of the West (Jewish) (POW)
(Fraternal benefit insurance society of persons of Jewish faith.)
F. 1896--M. 714
State groups: 12--Local groups: 22

Protestant Lawyers Association of New York
F. 1950--M. 90

Quaker Theological Discussion Group (QTDG)
F. 1957--M. 450

Railroad Evangelistic Association (REA)
F. 1941--M. 1,000

Rosicrucian Order
(International fraternal order.)
F.1909--M. 60,000
Local groups: 287

Shomrim Society (Jewish)
(New York City Policemen of Jewish faith.) M. 2,500

Society for the Promotion of Mohammedan Missions (SPMM)
(Members of Syfnodical Conference of Lutheran Church who are interested in promoting mission work among Mohammedans.)
F. 1944--M. 2,500

St. Ansgar's Scandinavian Catholic League
F. ....--M. 700
State Units: 10

St. Apollonia Guild (Catholic) (SAG)
(For spiritual development of Catholic dentists.)
F. 1958--M. 85

St. Martin de Porres Guild (Catholic)
F. 1935--M. 50,000

Sovereign Order of Saint John of Jerusalem (OSJ)
M. 500

Thomist Association (Catholic)
F. 1935--M. 700
Regional groups and Chapters: 4

United Lutheran Society (ULS)
(Fraternal benefit life insurance society of Lutherans.)
F. 1893--M. 16,000
Local groups: 500

Western Young Buddhist League (WYBL)
F. ....--M. 1,555
Local Chapters: 46

World Wide Baraca-Philathea Union
(International organization of Bible classes.)
F. 1890--M. 40,000
State groups: 8

Yavneh-National Religious Jewish Students Association
F. 1960--M. 1,200
Chapters: 40

Young Calvinist Federation (YCF)
F. 1919--M. 14,500
State groups: 48--Local groups: 620

8. Religion, Ethnic or National Origin and Sex:

Ancient Order of Hibernians in America (Irish) (AOH)
F. 1836--M. 191,000
Local groups: 736

Association of Romanian-American Orthodox Ladies Auxiliaries
F. 1871-Auxiliaries: 23

9. Ethnic or National Origin.

Alianza (Spanish)
(Fraternal benefit insurance society)

Alliance of Poles in America
F. 1895--M. 20,000
Local Lodges: 89

Alliance of Transylvanian Saxons
F. 1902--M. 9,871
Lodges: 43

American Arab Relief Agency (ARRA)
F. 1964

American Australian Association
F. 1948--M. 100

American Austrian Society
F. 1954--M. 275

American Bulgarian League (ABL)
F. 1944--M. 600

American-Byelorussian Cultural Relief Association (ABCRA)
F. 1957--M. 65

American Council of Polish Cultural Clubs (ACPCC)
Local groups: 25
M. 1,300

American Croatian Academic Club (ACAC)
F. 1957--M. 75

American GI Forum of United States (Mexico)
F. 1948--M. 20,000
State groups: 23--Local groups: 500

American Hellenic Congress (Greek) (AHC)
F. 1960--Local Chapters: 2,500

American Hungarian Federation (AHF)
F. 1906

American-Hungarian Medical Association
F. 1924--M. 200

American Italian Congress (AIC)
F. 1949--M. 700 (est.)

American Latvian Association in the United States (ALA)
F. 1951--M. 10,000
Local groups: 200

Americans (of Lebanese-Syrian Ancestry) for America (ALSAA)
(Anti-Communist and anti-Zionist Americans of Lebanese and Syrian ancestry)
F. 1964--M. 1,000 est.)

American Lithuanian Engineers and Architects Association
F. 1950--M. 400
Local Chapters: 9

American Luxembourg Society
F. 1894--M. 1,100

American-Nepal Education Foundation (ANEF)
F. 1956--M. 350

American Russian Aid Association (ARAA)
F. 1945--M. 350

American Russian Slavonic Democratic Club
F. 1925

American-Scandinavian Foundation (ASF)
F. 1910--M. 5,500

American Society of Danish Engineers (ASDE)
F. 1930--M. 200

American Society of the French Legion of Honor
F. 1922--M. 480

American Society of the Italian Legions of Merit
F. 1965--M. 200

American Committee on Italian Migration (ACIM)
F. 1952--M. 30,000

American Society of Rio de Janeiro (Brazilian)
F. 1918--M. 1,000 (est.)

American Society of Swedish Engineers (ASSE)
F. 1888--M. 300

American-Turkish Society (ATS)
F. 1949--M. 225

Anglo-American-Hellenic Bureau of Education (Greek)
F. 1941--M.2,590 (est.)

Armenian Educational Foundation (AEF)
F. 1950--M. 40

Armenian General Benevolent Union of America
F. 1906--M. 9,000 (est.)

Armenian Progressive League of America (APLA)

Armenian Revolutionary Federation of America (ARFA)

Armenian Students Association of America (ASA) F. 1910--M. 600

Armenian Youth Federation of America (AYF)
M. 2,500
Local Chapters: 60

Association of American Youth of Ukrainian Descent (ODUM)
F. 1950--M. 1,075
State groups: 14

Association of the Free French in the U.S.
F. 1945--M. 400

Association of Hungarian Students in North America (AHS)
F. 1957--M. 1,500

Association of Lithuanian Foresters in Exile (LMSI)
F. 1949--M. 68

Association Medicale Franco-Americaine (AMFA)
F. 1936--M. 150 (est.)

Association of Russian Imperial Naval Officers ia America
F. 1923--M. 150 (est.)

Association of Russian War Invalids of First World War
F. 1954--M. 118

Association of the Sons of Poland (SSP)
F. 1903--M. 18,000
Local groups: 120

Austro-American Society (Austrian)
F. 1945--M. 5000
Local Chapters: 5

Belgian American Educational Foundation (BAEF)
F. 1920--M. 94

Belgian Engineers in North America (BENA)
F. 1954--M. 110

Bohemian Free Thinking School Society (Czech)
F. 1863

Brazilian Center of New York
F. 1958--M. 200

Brooklyn Clubs International
F. 1967

Bulgarian National Front
F. 1948--M. 1,000

Byelorussian-American Association in the U.S.A. (BAZA)
F. 1949--M. 1,800
State groups: 7--Local groups: 3

Byelorussian Liberation Front (BLF)
F. 19570--M. 250
Branches: 5

Byelorussian Youth Association of America (BYAA)
F. 1951--M. 200
State groups: 4

Cape Verdian League Association (Portuguese)
M. 85

Committee of French Speaking Societies
F. 1927--M. 2,500 (est.)

Conference of Americans of Central and Eastern European Descent (CACEED)
F. 1956--M. 8

Confederated Spanish Societies
F. 1936--M. 2,500

Croatian Fraternal Union of America (CFU)
F. 1894--M. 117,000
Local Lodges: 1,100

Czech American National Alliance (ANA)

Czechoslovak National Council of America
F. 1918

Czechoslovak Rationalist Federation of America (CRFA)

Czechoslovak Society of America (CSA)
F. 1854--M. 52,000

Czechoslovak Society of Arts and Sciences in America
F. 19558--M. 980

Damascus Fraternity
M. 200

Danish Brotherhood in America
F. 1882--M. 10,000

Descendants of the Illegitimate Sons and Daughters of the Kings of Britain
F. 1950--M. 90

English-Speaking Union of the United States (British) (ESU)
F. 1920--M. 37,000

Estonian Aid
F. 1950

Evrytanian Association of America (Greek)
F. 19444--M. 450

Federation of American Citizens of German Descent (FACGD)
F. 1946--M. 3,850
Local Branches: 17

Federacion Estudiantil Hispanoamericana (Spanish) (University students in area of New York City)
F. 1963--M. 750

Federation of French Alliances in the United States (FFAUS)
F. 1902--Chapters: 280

Federation of French War Veterans (FFWV)
F. 1919--M. 500 (est.)

Federation of Hellenic American Societies of Greater New York (Greek)

Federation of Hungarian Former Political Prisoners
F. 1951-M. 15,000 (est.)

Federation of India Student Associations of the United States of America
F. 1964--M. 60

Federation of Ukrainian Student Organizations of America (SUSTA)
F. 1953--M. 2,500

Finnish-American Historical Society of the West
F. 1962--M. 300

Finnish American League for Democracy (FALD)

Finnish-American Society (FAS)
F. 1943-d-M. 12,000
Regional groups: 40

Finnish war Veterans in America (FWVA)
F. 1934--M. 290

First Hungarian Literary Society (FHLS)
F. ....--M. 600
Local groups: 6

Free Albania Organization (FAO)
F. 1940--M.1,200

French-American Atlantique Association
F. 1947--M. 15

French Engineers in the United States
F. 19444--M. 220
Local groups: 2

Friends of India Committee
F. 1961

Fund for the Relief of Russian Writers and Scientists in Exile (LITFUND)
F. 1918--M. 274
Local groups: 3

German-American National Congress (DANK)
F. 1955--M. 20,000

German Order of Harugari (DOH)
F. 1847-M. 2,000
State Grand Lodges: 8--
Subordinate Lodges: 80

German Society of the City of New York
F. 1784--M. 350

Grand Council of Columbia Associations in Civil Service (Italo-American)
F. 19338--M. 80,000
Constituent groups: 53

Greek American Progressive Association (GAPA)
F. 1923--M. 10,000
Chapters: 150

Holland Society of New York
F. 1885--M. 1,050
Regional and local groups: 25

Hungarian Committee
(Political exiles from Hungary)
F. 1955--M. 10

Hungarian National Sports Federation (HNSF)
F. 1949--M. 5,000

Hungarian Reformed Federation of America (HRFA)
F. 1896--M. 36,000
State groups: 6---Local groups: 204

Iuliu Maniu American Romanian Relief Foundation (IMF)
F. 1952--M. 300

Independent Order of Svithiod (IOS) (Scandinavian)
F. 1880--M. 10,000
Local groups: 59

Indonesian Students Association in the United States
F. 1961--M. 600
Local Branches: 42

International Order of Runeherg (Finnish-Swedish)
F. 1920--M. 4,000
Local Lodges: 62

Iran Foundation
F. 1948

Iranian Students Association in the United States (ISAUS)
F. 1952--M. 3,000
Local Chapters: 25

Irish Institute (II)
F. 1950--M. 2,000

Israeli Students Organization in the U.S.A. and Canada
F. 1950--M. 2,300
Local Chapters: 46

Italian American War Veterans of the United States (ITAM Vets)
F. 1932--M. 8,500 (est.)
State Associations: 10-Local Posts: 110

Italian Charities of America (ICA)
F. 1936--M. 1,200

Italian Welfare League (IWL)
F. 1920--M. 600

Italo American National Union
F. 1895--M. 7,500

Korean National Association
(Operates Korean language school for children and young adults)

Kosciuszko Foundation (Polish) (KF)
F. 1925--M. 2,000

Kossuth Foundation (Hungarian) (KF)
F. 1957

League of Americans of Ukrainian Descent
F. 1940-M. 52
Federation of 52 civic, religious and welfare organizations with 8,000 members of Ukrainian descent

League of United Latin American Citizens (Pan American) (LULAC)
F. 1929--M. 20,000

Lemko Association (Carpatho-Russian)
(Fraternal and cultural organization)
F. 1929--M. 1,500

Lithuanian Alliance of America (LAA)
F. 1886--M. 10,000
Local groups: 260

Lithuanian Scouts Association, College Division
F. 1924-M. 400
Local Chapters: 16

Lithuanian Veterans Association Ramove

Luxembourg Brotherhood of America (LBA)
F. 1902--M. 702
State Branches: 8

Macedonian Patriotic Orgallization of U.S, and Canada (MPO)
F. 1922

Maltese-American Benevolent Society (MABS)

Maltese Union Club
F. 1931

Masaryk Institute (Czech)
F. 1937--M. 300

Movement of Czechoslovak Christian-Democrats in Exile
F. 1957--Regional groups: 6

Mutual Aid Association of the New Polish Immigration
F. 1949--M. 750

Mutual Society of French Colonials (MSFC)
F. 1925--M. 175

Mutualista Obrera Mexicana
(Federation of Mexican societies in New York City)
F. 1936--M. 3

National Advocates Society (Polish)
M. 1,000 (est.)

National Association of Polish Americans (NAPA)
F. 1966

National Committee for Liberation of Slovakia (NCLS)
F. 1949--M. 2,500

Natl. Cymanfa Ganu Association of U.S. and Canada (Welsh)
F. 1929--M. 2,500

National Lithuanian Society of America
F. 1949--M. 1,250
Local Chapters: 21

National Medical and Dental Association (Polish)(NMDA)
F. 1900--M. 1,000
State groups: 7

National Slovak Society of the United States of America
F. 1890--M. 36,000 (est.)
Lodges: 800 (est.)

Netherland Benevolent Society of New York (NBS)
F. 1908--M. 300

Netherland Club of New York
F. 1903--M. 700 (est.)

Nigerian Students Union in the Americas (NSUA)
F. 1962--M. 4,000

North American Swiss Alliance (NASA)
F. 1865--M. 4,200

Norwegian Club
F. 1904--M. 100

Organization of Arab Students in the U.S.A. and Canada (OAS)
F. 1952--M. 7,000
Clubs: 102

Pakistan Students' Association of America (PSAA)
F. 1953--M. 1,500

Pan-Albanian Federation of America, Votra
F. 1912--M. 1,500
U.S. branches: 21

Pancretan Association of America (Greek)
F. 1929--M. 2,500

Pan-Macedonian Association (Greek)
F. 1947--M. 6,000

Pan-Rhodian Society of America (Greek)
F. 1926--M. 1,000

Peruvian American Association

Polish Association of America
F. 1895--M. 6,543

Polish Falcons of America (PFA)
(Fraternal benefit insurance society)
F. 1887--M. 28,100

Polish Institute of Arts and Sciences in America (PIASA)
F. 1942--M. 480

Polish Legion of American Veterans, U.S.A. (PLAV)
F. 1921--M. 15,000
State Departments: 13--Local Posts: 107

Polish National Alliance of Brooklyn, U.S.A.
F. 1903

Polish National Alliance of the United States of North America (PNA)
F. 1880--M. 332,962
Local groups: 1,405

Polish Nationai Union of America (PNUA)
F. 1908--M. 32,550
Local groups: 231

Polish Singers Alliance of America (PSAA)
F. 1889
State groups: 100--Local groups: 15

Polish Union of America (PUA)
(Fraternal benefit life insurance society)

Polish Union of the United States of North America
F. 1890--M. 16,226
Local Lodges: 324

_____ Society
(Social and welfare organization)
F. 1946--M. 250

Portuguese American Progressive Club of New York

Portuguese Continental Union of the United States of America (PCU)
F. 1925--M. 9,315
Local Lodges: 60

Portuguese Society Queen St. Isabel
F. ....--M. 13,000
Local groups: 129

Royal Clan, Order of Scottish Clans (OSC)
F. 1878--M. 15,767

Russian Brotherhood Organization of the U.S.A.
F. 1900--M. 12,084
State groups: 5--Local Lodges: 387

Russian Children's Welfare Society (RCWS)
F. 1926--M. 200 (est.)

Russian Consolidated Mutual Aid Society of America (RCMASA-ROOVA)
F. 1925--M. 3,327

Russian Independent Mutual Aid Society (RIMAS)
F. 1931--M. 1,471

Russian Nobility Association in America
F. 1938--M. 120

Russian Orthodox Fraternity Lubov
F. 1912--M. 1,080
Local Lodges: 73

Russian People's Center (RPC)
F. 1929--M. 500

Russian Student Fund
F. 1921

St. Andrew's Society of the State of New York (Scottish)
F. 1756--M. 1,200

St. David's Society of the State of New York (Welsh)
F. 1801--M. 250 (est.)

Scandinavian American Fraternity (SAF)
F. 1893--M. 5,696
Local groups: 88

Scandinavian Fraternity of America (SFA)
F. 1915--M. 10,000
Local groups: 112

Scotch-Irish Society of the United States of America
F. 1889--M. 360

Scottish War Veterans of America (SWVA)
F. 1940--M. 80
Local group: 1

Selfreliance Association of American Ukrainians (SAAU)
F. 1947--M. 10,000
State groups: 17

Serb National Federation
F. 1929--M. 24,000

Slavonic Benevolent Order of the State of Texas
F. 1897--M. 35,079
Local Lodges: 142

Sloga Fraternal Life Insurance Society
F. 1908--M. 2,978

Slovak Catholic Sokol (SCS)
F. 1905--M. 51,000 (est.)
Local groups: 18

Slovak League of America (SLA)
F. 1907--M. 11,200
State groups: 8--Local groups: 123

Slovak Writers and Artists Association
F. 1954--M. 57

Slovene National Benefit Society (SNPJ)
F. 1904--M. 68,000
Local groups: 525

Slovenian Mutual Benefit Association (SMBA)
F. 1910--M. 21,300 (est.)
Local groups: 50

Society of Danube Swabians
F. 1953--M. 3,050

Society of Kastorians "Omonia" (Greek)
F. 1910--M. 500

Society of Russian Veterans of the World War (SRV)

Sokol U.S.A. (Slovak)
F. 1896--M. 23,000
District groups: 12-Local groups: 200

Sons of Norway (S/N)
F. 1895--M. 40,000
State groups: 23--Provinces: 3
Local groups: 260

Sons of Scotland Benevolent Association
F. 1876

Spanish Benevolent Society La Nacional"
M. 3,500

Steuben Society of America (German) (SSA)
F. 1919

Swedish Colonial Society (SCS)
F. 1908--M. 550

Swiss Benevolent Society of New York (SBS)
F. 1851--M. 1,000.

Swiss Society of New York
F. 1930--M. 475

Thessalonikian Society of America "Saint Demetrios" (Greek)
F. 1960--M. 300

Tolstoy Foundation (Russian) (TF)
(Voluntary agency to assist refugees from Soviet Russia and other countries under Communist oppression)
F. 1939--M. 7,000

Ukrainian Artists' Association in U.S.A. (OMUA)
F. 1952--M. 60
Chapters: 3

Ukrainian Congress Committee of America (UCCA)
(Federation of Ukrainian anti-Communist organizations)
F. 1940--M. 200
Local Branches: 115

Ukrainian Engineers' Society of America (UESA)
F. 1948--M. 650
Chapters: 9

Ukrainian Life Cooperative Association
F. 1954--M. 145

Ukrainian Medical Association of North America (UMANA)
F. 1950--M. 1,200
Local groups: 15

Ukrainian National Association (UNA)
(Fraternal benefit life insurance society) F. 1894--M. 87,000
Districts: 29--Local Chapters: 489

Ukrainian National Youth Federation of America (UNYFA)
F. 1933--M. 150
Local groups: 4

Ukrainian Workingmen's Association (UWA)

Ukrainian Youth League of North America (UYLNA)
F. 1933--M. 800

Ulster-Irish Society (UIS)
F. 1927--M. 250

Union Espanola Benefica de California (Spanish)
(Fraternal benefit life insurance society)

Union and League of Romanian Societies of America (ULRSA)
M. 5,082
State groups: 65

Union of Poles in America (Polish) (UPA)

United American Croats (UAC)
F. 1946--M. 5,000
Local Branches: 16

United Friends of Needy and Displaced People of Yugoslavia
F. 1946--M. 500

United-Italian American Labor Council (UIALC)
F. 1941

United Italian American league (UIAL)
(Federation of Italo-American civic and political organizations)

United Lithuanian Relief Fund of America (ULRA)
F. 1944--M. 2,000
State Divisions: 3--Local Chapters: 70

United National Life Insurance Society (Portuguese) (UNLIS)
F. 1868--M. 15,000
State groups: 4--Local groups: 98

United Russian Orthodox Brotherhood of America (UROBA)
F. 1915--M. 3,640
Local Lodges: 150

United Swedish Societies (USS)
(Federation of 60 Swedish organizations)
F. 1903--M. 7,560 (est.)

United Whiteruthenian (Byelorussian) American Relief Committee
F. 1948--M. 478
Branches: 3

Welsh Society
F. 1729--M. 320

West Indian Students Association (WISA)

F. 1940--M. 200
Chapters: 5

Western Bohemian Fraternal Association (WBFA)
F. .....--M. 60,000
Lodges: 294

Western Slavonic Association WSA)
F. 1908--M. 10,490
State Lodges: 18--Local
Lodges: 45

Whiteruthenian (Byelorussian) Congress Committee of America
F. 1951--M. 10

World Association of Estonians (WAE)
F. ....-M. 500 (est.)

World Association of Upper Silesians
F. 1948--M. 3,442 (U.S.)

World Federation of Ukrainian Student Organizations of Michnowsky (TUSM)
F. 1949--M. 600

10. Ethnic or National Origin and Sex:

American Union of Swedish Singers (AUSS)
F. 1892--M. 900
Regional Divisions: 3--Local Choruses: 31

Armenian Relief Society (ARS)
F. 1910--M. 16,000 (est.)-world
M. 3,000 in U.S. and Canada

Association of American Wives of Europeans (AAWE)
M. 215

Association of Philippine-American Women (APAW)
F. 1947

Association of Polish Women of the United States

Baltic Women's Council (BWC)
F. 1947

Canadian Club of New York (CCNY)
F. 1903--M. 1,673

Chinese Women's Benevolent Association

Committee of French American Wives
F. 1939-d-M. 100

Danish Sailors and Firemen's Union
F. 1897

Daughters of Evrytania (Greek)
F. 1948--M. 150

Daughters of Penelope (Greek)
F. 1929--M. 13,000
Local Chapters: 314

Daughters of Scotia (Scottish)
F. 1899--M. 17,000

Friends of A.D.I.R. (French)
(American representative of Association "Nationale des Anciennes Deportees et Internees de la Resistance (ADIR), an organization of women who served in the French Resistance movement during World War II)

Maids of Athens (Greek) (MA)
F. 1936--M. 1,300
Chapters: 155

National Council of Women of Free Czechoslovakia (NCWFC)
F. 1951--M. 125
Local groups: 4

National Society, Daughters of the Barons of Runnernade (DBR)
F. 1921--M. 650

National Society, Daughters of the British Empire in the United States of America
F. 1909--M. 5,500

Nichibei Fujinkai (Japanese)
F. 1960--M. 300

Norwegian Seamen's Association

Order of Ahepa (Greek)
F. 1922--M. 25,000
Local groups: 430

Polish Legion American Veterans U.S.A., Ladies Auxiliary
F. 1921--M. 8,000
State and Regional groups: 16
Local Chapters: 88

Polish Women's Alliance of America
F. 1898--M 91,000
State groups: 17--Local groups: 750

St. George's Society of New York (British)
F. 1770--M. 1,000

Schlaraffia Nord-Amerika (German)
F. 1859--M. 700
Local Chapters: 24

Seamen of Sweden, Inc.
F. 1948

Society of Daughters of Holland Dames
F. 1895--M. 150

Society of the Friendly Sons of St. Patrick in the City of New York (Irish)
F. 1784--M. 1,500

Sons of Pericles (Greek)
(Auxiliary of Order of Ahepa)

Sons of Italy Supreme Lodge

Supreme Lodge of the Danish Sisterhood of America (DSA)
F. 1883--M. 5,000 (est.)
Local groups: 120

Ukrainian National Women's League of America (UNWLA)
F. 1925--M. 7,000

UNICO National (Italian) (UNICO)
(Business and professional men of Italian extraction or married to a person of Italian extraction)
F. 1922--M. 4,000
Chapters: 100

11. Sex:

Achive 20-30 International
F. 1922--M. 4.800
Local Clubs: 240

Adventurers Club of New York
F. 1903--M. 368

Altrusa International
(Service organization of executive and professional women)
F. 1917--M. 18,000
Districts: 13--Local groups: 525

American Gold Star Mothers
F. 1928--M. 17,000
State Departments: 33--Local Chapters: 540

American Interprofessional Institute (AII)
F. 1924--M. 805
Local Chapters: 15

American Legion Auxiliary (ALA)
F. 1919--M. 1,000,000 (est.)
State groups: 54--Local groups: 14,000

American War Dads (AWD)
F. 1942--M. 5,000
State groups: 16--Local groups: 112

American War Dads Auxiliary (AWDA)
F. 1945--M. 2,396

American War Mothers (AWM)
F. 1917--M. 20,000
State groups: 34--Local groups: 600

American Woman's Association (AWA)
(Business and professional women and women in public affairs)
F. 1922

American Women's Voluntary' Services (AWVS)
F. 1940--M. 5,000
Local groups: 40 (est.)

Another Mother for Peace (AMP)
F. 1967--M. 65,000 (est.)

Armenian Women's Welfare Association
F. 1921--M. 500

Association of the Junior Leagues of America (AJLA)
F. 1921--M. 89,700
Regional groups: 14--Local Leagues: 209

Auxiliary to Sons of Union Veterans of the Civil War
F. 1883--M. 5,123

Aztec Club of 1847
(Direct male descendants of commissioned officers of U.S. armed services who took part in Mexican War)
F. 1847--M. 170

Circle K International
(Service organization for college men sponsored by Kiwanis International)
F. 1955--M. 11,000
Local groups: 625

Civitan International (CI)
(Business and professional men)
F. 1920--M. 36,000
Clubs: 1,600

Colonial Dames of America (CDA)
F. 1890--M. 2,000
Chapters: 17

Companions of the Forest of America
(Fraternal benefit life insurance society for women)
F. 1588--M. 300,000 (est.)

Cosmopolitan Associates (Women) (CA)
(Foreign-born wives)
F. 1950--M. 5,500
Local Chapters: 80

Country Women's Council, U.S.A. (CWC)
F. 1939--M. 3,000,000
State groups: 66

Cosmopolitan International
(Community business and professional men)
F. 1933--M. 4,064
State Federations: 8--Local groups: 100

Dames of the Loyal Legion of the United States (DLL)
F. 1899--M. 900 (est.)
State groups: 9

Daughters of the Cincinnati (DC)
F. 1894--M. 402

Daughters of the Republic of Texas
F. 1891--M. 3,000
Chapters: 55

Disabled American Veterans Auxiliary (DAVA)
F. 1922--M. 35,000

Fathers-At-Large (F @ L)
F. 1963--M. 150 (est.)

Forty and Eight
(Fraternal organization of Veterans who are also members of American Legion)
F. 1920--M. 75,000

Local groups: 1,050

Forty Plus Club of New Yore
F. 1939--M. 1,300

General Federation of Women's Clubs (GFWC)
F. 1890--M. 11,000,000 (53 countries)
Membership in U.S. includes 800,000 members in 15,600 Clubs

General Society of Colonial Wars (GSCW)
F. 1892--M. 4,200
State Societies: 29

Gold Star Wives of America (GSWA)
F. 1945--M. 1,000

Honorable Order of the Blue Goose, International
(Property and casualty insurance men)
F. 1906--M. 13,000
State groups: 66

International Association of Torch Clubs (Torch)
(Men from 25 professions)
F. 1924--M. 5,300
Local groups: 118

International Geneva Association (IGA)
(Fraternal and benevolent organization of men in hotel, restaurant, catering trades, beverage, food, etc industries)
F. 1904--M. 2,500

International Inner Wheel
(Wives of Rotarians)
F. 1934--M. 43,000

International Order of Hoo-Hoo
(Fraternal society of men in forest products and lumber industry)
F. 1892--M. 8,000
Local Clubs: 129

International Toastmistress Clubs (ITC)
F. 1938--M. 18,000
Local groups: 1,150

Iota Tau Tau
(Women law students and attorneys)
F. 1995--M. 1,500
Local Chapters: 39

Key Club International (KCI)
F. 1925--M. 95,000
State Districts: 30--Clubs: 3,500

Kiwanis International (KI)
F. 1915--M. 275,000
Districts: 30--Local Clubs: 5,700

Ladies Auxiliary, Military Order of the Purple Heart, United States of America
F. 1934--M. 3,000

Ladies of the Grand Army of the Republic
F. 1885--M. 10,000
State Departments: 31--Local Circles: 353

La Leche League International (LLI)
F. 1956--M. 6,000
Local groups: 700

La Sertoma International
F. 1929--M. 5,000
Regional groups: 11

Legion of Guardsmen Auxiliaries
F. 1948--M. 1,000
Local Chapters: 15

Lions International (LI)
F. 1917--M. 913,522 (145 countries)
Local Clubs: 23,807

Majestic Circle, Military Order of Lady Bugs of U.S.A. (MOLB)
F. 1925--M. 4,500
State Royals: 15--Local Circles: 160

Marine Corps Fathers Association of New York
F. 1943--M. 200

Marine Corps Auxiliary (MCLA)
F. 1937--M. 3,500
State groups: 20--Local groups: 169

Merrill's Marauders Association
F. 1947--M. 600

Military Order of Foreign Wars of the United states (MOFW)
F. 1894--M. 3,000 (est.)

Military Order of the Loyal Legion of the United States (MOLLUS)
F. 1865--M. 1,200
State Commanderies: 13

Minute Women of the United States of America
F. 1949

Moms of America
(Mothers of Veterans)
F. 1941--M. 3,600 (est.)

Mothers of World War II
F. 1942--M. 8,500
State groups: 8--Local groups: 350

National Achievement Clubs (NAG)
F. 1937--M. 8,000

National Association of Navy and Marine Veterans of the Spanish-American War, 1898-1902
F. 1941--M. 134
Regional groups: 3

National Council, Daughters of America (DA)
(Affiliated with Junior Order, United American Mechanics)
F. 1891--M. 74,000
State groups: 33

National Exchange Club (NEC)
F. 1911--M. 45,000
District groups: 29--Local Clubs: 1,100

National Federation of Business and Professional Women's Clubs (NFBPWC)
F. 1919--M. 178,000
State groups: 53--Local groups: 3,800

National Federation of Grandmother Clubs of America
F. 1938--M. 20,000 (est.)

National Order of Trench Rats (Disabled) (NOTR)
F. 1994-M. 3,100
Dugouts (local groups): 125

National Order of Women Legislators (OWL)
F. 1938--M. 374

National Society Colonial Daughters of the 17th Century
F. 1896

National Society, Daughters of the American Colonists (DAC)
F. 1921--M. 10,000
State groups: 46--Local groups: 250

National Society, Daughters of the American Revolution
F. 1890--M. 188,031
Local Chapters: 2,894

National Society Daughters of Utah Pioneers
F. 1901--M. 40,000
County Companies: 127--Local Camps: 1,015

National Society of the Sons of Utah Pioneers
F. 1933--M. 1,150
Chapters: 24

National T.T.T. Society (TTT)
(Women's charitable organization)
F. 1911--M. 6,533
State groups: 6--Local groups: 266

National Society, United States Daughters of 1812
F. 1892--M. 4,500
State groups: 33--Local groups: 115

National Society Women Descendants of the Ancient and Honorable Artillery Co. (DAH)
F. 1927--M. 900

National Yeomen F (NYF)
F. 1926--M. 1,300

Native Daughters of the Golden West (NDGW)
F. 1886--M. 20,000

Native Sons of the Golden West (NSGW)
F. 1875--M. 16,000

Naval Order of the United States
F. 1890--M. 4,500
Local groups: 11

Navy Club of the United States of America Auxiliary
F. 1941--M. 1,000
State and local groups: 20

Navy Mothers' Clubs of America (NMCA)
F. 1930--M. 25,000
State groups: 28--Local groups: 550

Navy Wives Clubs of America (NWCA)
F. 1935--M. 5,000
Chapters: 115

New York Southern Society
F. 1886--M. 900

Optimist International
(Federation of business, industrial and professions men's service clubs)
F. 1919--M. 100,000
Districts: 41--Local Clubs: 2.900

Order of the Founders and Patriots of America (OFPA)
F. 1896--M. 900
State groups: 15

Phi Delta Kappa
(Women who teach or hold administrative positions in public schools)
F. 1923--M. 5,000
Chapters: 77

Pilot Club International
F. 1921-M. 15,000 (est.)
Local Clubs: 500

Quota International (QI)
(Women holding executive positions in business and the professions)
F. 1919-M. 12,000
Local groups: 400

Round Table International
F. 1922--M. 1,600
Local groups: 50

Ruritan National
(Men's civic service club in towns of 5,000 population or less)
F. 1928--M. 35,113
Local groups: 1,169

Sertoma International
(Business and professional men)
F. 1943--M. 20,000
Districts: 54--Local groups: 525

Society of California Pioneers (SCP)
F. 1850--M. 1,075

Society of Cincinnati
F. 1783--M. 2,450
State groups: 13

Sons of the American Legion
F. .....-M. 16,327

Sons of Spanish American War Veterans (SSAWV)
F. 1927--M. 940
Departments: 9--Camps: 28

Sons of Union Veterans of the Civil War (SUVCW)
F. 1881--M. 8,000
State groups: 21--Local Camps: 400

Soroptimist Federation of the Americas (SFA)
(Executive and Professional women in 11 North, South and Central American countries and islands)
F. 1921--M. 26,000
Local Clubs: 890

St. Nicholas Society
(Male descendants of persons living in New York prior to 1785)
F. 1835

Tau Gamma Delta
(Women in business and the professions)
F. 1945--M. 550

The Westerners
F. 1945--M. 963

Toastmasters International
F. 1945--M. 75,000

Travelers Protective Association of America (TPAA)
F. 1890--M. 204,812
State Divisions: 32--Local Posts: 290

United States Army Ambulance Service Association (USAACS)
F. 1920--M. 800
Local groups: 7

United States Army Mothers, National
F. 1940--M. 8,000 (est.)
State groups: 12--Local Posts: 106

Venture Club Council of the Americas (Business and professional women who have not reached the age of 32)
F. 1934--M. 2,000
Local Clubs: 150

Wheels of Progress (WP)
F. 1924--M. 750 (est.)

Widows of World War I (WWW I)
F. 1946--M. 5,327
State Departments: 11--Local Chapters: 162

Wives of the Armed Forces, Emeritus (WAFE)
F. 1942--M. 12,000 (est.)
State groups: 17

Women's Army Corps--Veterans Association (WACVA)
F. 1947--M. 2,000
Local groups: 32

Women of the Legion of Valor, U.S.A.
F. ....--M. 400

Women's Overseas Service League (WOSL)
F. 1921--M. 2,000
Service Areas: 11--Local Units:
60

Women World War Veterans (WWWV)
F. 1919--M. 80,000

Woodmen Rangerettes
(Organization of girls to age 16, sponsored by Woodmen of the World Life Insurance Society)
F. 1965--M. 30,000
Local Clubs: 222

Woodmen Rangers
(Organization of boys to age 16, sponsored by Woodmen of the World Life Insurance Society)
F. 1965--M. 46,000
Local Clubs: 410

Zonta International
(Executive women in business and professions)
F. 1919--M. 20,000
Local groups: 550

In addition to the organizations listed above, there is the broad group of college and university fraternities and sororities. Most of them have definite religious overtones, such as belief in God, etc. Secondly, most of the fraternities and sororities do not have actual integration, whether the group is white, black or yellow race oriented. By practice, the members of

the great majority of the groups do select their membership and associates on a bond of common race, regardless of the color.

Because of these factors, and further, in order to not unduly lengthen this brief, we have not listed the fraternities and sororities individually. Our research has revealed, however, that there are some 63 Greek letter fraternities, with 4,880 local groups and a total membership of 2,382,000. In addition, there are 3,297 alumni groups, the total membership of which is not available.

There are 37 sororities, with 3,258 chapters and a total membership of 1,403,000. Surprisingly, these sororities more alumni chapters than

active chapters, with a total of 6,159 alumni groups. Total membership of alumni groups was not determined.

Honorary societies or associations are not listed, but they seem to be largely selected on the basis of sex membership requirements, as well as attainment in a particular field.

Youth organizations such as Boy Scouts, Girl Scouts, Camp Fire Girls, Boys Clubs, Girls Clubs, National Association of Colored Girls Clubs, and similar groups, although having religious overtones (i.e., belief in God -- prayer, etc.), as well as selected membership based upon sex, have also not been included. There are youth organizations of every religious denomination and with racial qualifications of every race.

We could not determine the number of members or groups, or the membership practices or rules of such militant organizations as the Black Panthers, Minutemen, Silver Shirts, etc., so they are not included.

Purely local clubs and organizations are not included, but they must run into the hundreds of thousands throughout the United States. Our research did not disclose any source of information as to these purely local clubs or organizations. It is known that such groups encompass many varied activities, such as golf and country clubs, bridge and chess clubs, garden clubs, tennis clubs, polo clubs, yacht clubs, athletic clubs and others of varied private nature.

From the information available, it would appear that there are 56,555,000 members of the organizations listed above. If you add the Greek letter fraternities and sororities and the youth groups, there would be approximately another 16,400,000 members, for a total of 72,955,000.

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No. 93-225

In The

Supreme Court of the United States

October Term, 1993

ST. GEORGE "DIXIE" LODGE #1743,
BENEVOLENT & PROTECTIVE ORDER OF ELKS,

Petitioner,

v.

SANDRA BEYNON,

Respondent.

On Petition For A Writ Of Certiorari To The Utah Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER STATEMENT OF QUESTION PRESENTED

Does Petitioner's First Amendment associational right supersede the power of the State of Utah to regulate the sale or use of alcohol as guaranteed by the Twenty-first Amendment?

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No. 93-225

In The

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BENEVOLENT & PROTECTIVE ORDER OF ELKS,

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v.

SANDRA BEYNON,

Respondent.

On Petition For A Writ Of Certiorari
To The Utah Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Sandra Beynon, by and through her counsel of record, hereby submits her brief in opposition to the petition for a writ of certiorari.

COUNTER STATEMENT OF THE CASE

The Petitioner, the St. George, Utah affiliate of the national Benevolent & Protective Order of Elks (hereinafter the "Elks") holds a Utah state issued private liquor club license. Petitioner's Brief, p. 7. That license allows the Elks to sell liquor to its members and guests. *Id.*

In order to secure a private liquor club license from the State of Utah an entity must be a non-profit corporation and must be private, that is, it must be selective in its membership policies. Ut. Code Ann. § 32A-5-102 (1953 as amended); *Beynon v. St. George "Dixie" Lodge*, Petitioner's Brief, pp. A-11, A-12.

One specific statutory requirement for the issuance of a private club liquor license is that the entity must agree not to violate any Utah laws. Ut. Code Ann. § 32A-5-105(2)(c) (1953 as amended); Petitioner's Brief, p. A-24.

The Utah Civil Rights Act, Ut. Code Ann. § 13-7-1 et seq. (1953 as amended) prohibits gender discrimination in any enterprise that is regulated by the state. Ut. Code Ann. §§ 13-7-1 et seq (1953 as amended); Petitioner's Brief, p. 8. An entity granted a private liquor club license by the State of Utah is an enterprise regulated by the state subject to the provisions of the Utah Civil Rights Act. Ut. Code Ann. § 13-7-3 (1953 as amended); Petitioner's Brief, p. A-11.

Except for Sandra Beynon's application, no membership request had been rejected for two and one-half years before this suit was filed. The St. George Elks has approximately 1,056 members,[1] and no limit exists for the number of men who may join. In fact, men are actively recruited and encouraged to join. Petitioner's Brief, p. A-3.

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[1] Based on 1989 statistics.

The Elks' facilities include a restaurant/bar open to members, their families, and guests. Dinner is served three nights a week, and lunch is served daily, including Sunday brunch. Non-members rent the Elks facilities for weddings, parties, and business meetings. The only requirement for use of the facilities is that a member sponsor and attend the event. Petitioner's Brief, pp. A-3, A-4. In the fiscal year 1986, the Elks earned $25,197.00 from rental of its facilities.

The Elks has a St. George City business license and a private club liquor license under the Utah Alcoholic Beverage Control Act (hereinafter the "ABCA").[2] The liquor license allows the Elks to sell alcohol to its members and their guests. The Elks sells more than $250,000.00 worth of alcoholic beverages annually. Petitioner's Brief, p. A-4.

The stated purpose of the Elks is to promote friendship and fraternal affiliation among its members and to engage in charitable work. The Elks annually sponsors numerous charitable and social activities in the St. George area. Each Tuesday night the Elks holds a private meeting where the members discuss business and perform certain rituals. That weekly meeting is the only Elks function from which non-members are barred. Petitioner's Brief, p. A-5.

The Utah Supreme Court held that the plain language of the Utah Civil Rights Act, Utah Code Annotated

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[2] Utah Code Ann. §§ 32A-1-101 to -124, 32A-5-101 to -108; Petitioner's Brief, p. 46.

§ 13-7-2(c)(2) (1953 as amended) contemplates that entities regulated by the ABCA are subject to the anti-discrimination provisions of the Act. An entity that applies for and receives a state liquor license under the ABCA subjects itself to the provisions of the Utah Civil Rights Act by accepting the license. The ABCA imposes extensive regulatory control over the sale and consumption of alcoholic beverages in Utah. Under the ABCA *all* clubs in Utah that dispense alcoholic beverages *must* be both nonprofit[3] and private.[4] Petitioner's Brief, pp. A-11, A-12. Under the ABCA and the Utah Civil Rights Act, the Elks is no different than any other private eating and drinking club in Utah. Petitioner's Brief, p. A-13.

Under the ABCA, any entity seeking a private club liquor license must submit itself to the intense regulation imposed by the state legislature. One of the many requirements under the ABCA is that licensees must not violate any law or ordinance.[5] The Elks voluntarily elected to abide by the laws of Utah, including the Utah Civil Rights Act, when it applied for and received a private club liquor license. Petitioner's Brief, p. A-24.

The Utah Supreme Court held that the Elks may not discriminate on the basis of gender as long as it accepts and benefits from a state-issued liquor license. Petitioner's Brief, pp. A-25, A-26.

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[3] Utah Code Ann. §§ 32A-5-102(1)(e), 32A-5-105(1); Petitioner's Brief, p. A-12.

[4] *Id.* § 32A-5-107(2); Petitioner's Brief, p. A-12.

[5] Utah Code Ann. § 32A-5-105(2)(c); Petitioner's Brief, pp. A-10, A-11.

The Utah Supreme Court specifically noted that the unique and highly regulatory scheme of the ABCA present in this case was not present in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984) and *Board of Directors of Rotary International v. Rotary Club*, 481 U.S. 537 (1987), decided by this Court and which considered gender discrimination and associational rights under the First Amendment. Petitioner's Brief, p. A-27.

As long as the Elks holds a private club liquor license, the Utah Supreme Court held it must comply with the anti-discrimination provisions of the Utah Civil Rights Act. Petitioner's Brief, p. A-27.

SUMMARY OF ARGUMENT

This case has little significance beyond the boundaries of Utah. Under the Supreme Court Rules, there is no reason to revisit the issue presented herein. This Court's rulings in *Board of Directors of Rotary International v. Rotary Club*, 481 U.S. 537 (1987) and *Roberts v. United States Jaycees*, 468 U.S. 609 (1984) have resolved the constitutional issue as framed by Petitioner. The compelling state interest in ending gender discrimination may constitutionally be allowed to cause minor incursions into associational rights protected by the First Amendment.

Petitioner's associational right does not supersede the right of the State of Utah to regulate the use of alcohol. The Twenty-first Amendment to the United States Constitution grants the State of Utah broad powers to regulate sales and use of alcohol. Prior Supreme Court cases establish that states may constitutionally limit First

Amendment freedoms while exercising their Twenty-first Amendment powers to license liquor-selling establishments.

Finally, Petitioner's associational interests are not within the scope of First Amendment protection. This Court's prior decisions have established that First Amendment protection of freedom of association extends only to truly private entities. This Court found that the Rotary Club and the Jaycees, two (2) private organizations similar to Petitioner lacked sufficient intimacy to afford them the constitutional privacy protection granted to family-like relationships. *Board of Directors of Rotary International v. Rotary Club*, 481 U.S. 537 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). Petitioner is neither intimate nor selective enough to qualify for the First Amendment protection that is given to truly private clubs.

This Court's prior decisions have already resolved the issue presented herein by Petitioner. The State's compelling interest in ending gender discrimination allows it to impinge on Petitioner's First Amendment associational rights. When the State of Utah regulates alcohol, the State also possesses the Twenty-first Amendment power to limit Petitioner's First Amendment rights. Finally, the First Amendment's protection of associational freedom does not extend to non-selective, non-intimate, clubs such as that of Petitioner. This Court should deny the petition for a writ of certiorari.

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ARGUMENT: REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT PRESENT AN IMPORTANT OR BROAD REACHING ISSUE TO BE CONSIDERED BY THIS COURT.

This action does not involve an issue that this Court typically considers. "A petition for a writ of certiorari will be granted only when there are special and important reasons therefor." Sup. Ct. R. 10.1 (1993). No such "special and important reasons" are implicated in the instant case. The issue herein does not involve any conflict between different state courts of last resort. Sup. Ct. R. 10.1(a)-(b). The Utah Supreme Court decision in the instant case does not involve an "important question of federal law which has not been, but should be, settled by this Court." Sup. Ct. R. 10.1(c). The Utah Supreme Court's decision in the instant case fully followed applicable decisions of this Court. *Id.*

The issue herein has already been considered and resolved by this Court against petitioner's position. In two (2) cases, not involving the sale and licensing of alcohol, *Board of Directors of Rotary International v. Rotary Club*, 481 U.S. 537 (1987) and *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), this Court determined that the First Amendment right of association may be circumscribed by a compelling state interest such as ending gender discrimination. *Rotary*, 481 U.S. at 549 (civil rights statute forbidding gender discrimination did not violate male Rotary members' expressive association rights); *Roberts*, 468 U.S. at 623 (Minnesota's compelling state interest in eradicating discrimination justified interference with male Jaycee members' associational freedoms).

The additional state interest in regulating the sale of liquor and the broad powers granted to states to do so, which are present in this case, mean that the issues decided in *Roberts* and *Jaycees* against gender discrimination, must inexorably be decided against the Elks in this case.[6]

This action involves a straightforward application of the Twenty-first Amendment to state regulation of the sale and licensing of alcohol. This action involves the interpretation of a state liquor licensing statute and a state civil rights act unique to the State of Utah.

Although Petitioner spreads upon ninety (90) pages of its brief (Petitioner's Brief, pp. A-157 – A-247) the names of many hundreds of world wide organizations that discriminate in their membership, Petitioner fails to note that only two (2) of those organizations (the Elks and the Moose) have private club liquor licenses issued by the State of Utah. A Utah state issued liquor license and the concomitant regulations are the controlling facts relative to this action.

This case does not deserve the attention of this Court.

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[6] The Utah Supreme Court noted, "the unique and highly regulatory scheme of the ABCA [Utah Alcohol Beverage Control Act] at issue here was not present in *Roberts, Rotary International,* or any other case cited by the parties." *Beynon v. St. George Elks,* Petitioner's Brief, p. A-59.

II. THE TWENTY-FIRST AMENDMENT REQUIRES THAT APPLICANTS FOR STATE LIQUOR LICENSES OBEY STATE LAWS.

The Twenty-first Amendment endows the State of Utah with broad police powers in regulating alcohol.

> The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

U.S. Const. Amend. XXI, § 2. The Twenty-first Amendment states that anyone who seeks a state liquor license must adhere to the laws of the issuing state.

Allowing Petitioner to violate the Utah Civil Rights Act while it possesses a Utah State liquor license would emasculate the Twenty-first Amendment. Enactment of the Utah Civil Rights Act vis-a-vis state liquor licenses was a valid exercise of the police and constitutional powers of the State of Utah. Petitioner agreed to comply with such enactments when it applied for a State liquor license. Petitioner may not now exempt itself from Utah State laws, just because it disagrees with or finds such laws inconvenient. Under the Twenty-first Amendment, Petitioner may be forced to uphold all Utah State laws in order to maintain its State liquor license.

III. THE COURT HAS ALREADY DECIDED THAT STATES' TWENTY-FIRST AMENDMENT RIGHTS TO REGULATE THE SALE AND USE OF ALCOHOL SUPERSEDE FIRST AMENDMENT RIGHTS.

The State of Utah has not impermissibly infringed on Petitioner's associational right. Previous decisions by this Court cases establish that states' power to control the manner and circumstances under which liquor may be dispensed includes the power to limit the exercise of First Amendment freedoms.

Under the Twenty-first Amendment, states have the power to regulate liquor sales, even where such regulations interfere with First Amendment rights. In *California v. LaRue*, 409 U.S. 109 (1972), this Court clarified states' regulatory powers under the Twenty-first Amendment. In *LaRue*, the State of California's Department of Alcohol Beverage Control promulgated regulations regarding the type of entertainment that state-licensed bars and nightclubs could present. *Id.* at 110. The regulations prohibited actual or simulated sexual acts, the actual or simulated display of pubic hair, anus, or genitalia, or films showing the prohibited acts. *Id.* at 111-112. The Court in *LaRue* noted that the State's regulations "would proscribe some forms of visual presentation" that would otherwise be protected by the First Amendment. *Id.* at 116. However, the Court held that states "may validly limit the manner in which the First Amendment freedoms are exercised." *Id.* at 116 n. 4. Further, the Court found as a "critical fact" that California's regulations did not prohibit nude performances everywhere, only in establishments licensed to sell liquor. *Id.* at 118. The Court concluded

> Given the added presumption in favor of the validity of the state regulation in this area that the Twenty-first Amendment requires, we cannot hold that the regulations on their face violate the Federal Constitution.

Id. at 118-119.

No subsequent decision of this Court has limited states' rights to regulate circumstances surrounding the sale and use of alcohol. In *New York State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981), this Court followed *LaRue*. In *Bellanca*, the New York State Liquor Authority prohibited topless dancing in establishments licensed by the State to serve alcohol. *Id.* at 714. This Court found that the State had not attempted to ban topless dancing in all public places in the State, only in establishments where liquor was served. *Id.* at 716. The Court concluded that the Twenty-first Amendment gave the state legislature powers to regulate liquor establishments that could override whatever artistic or communicative qualities may attach to topless dancing. *Id.* at 718. In 1986, this Court followed *LaRue* and *Bellanca* in a similar alcohol regulation case. *Newport v. Iacobucci*, 479 U.S. 92 (1986).

This Court has found liquor regulations to violate the First Amendment only when the State has vested the power to regulate in constitutionally inappropriate third parties. This Court in *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982) found that vesting churches with the power to veto liquor license applications impermissibly impinged upon the Establishment Clause of the First Amendment. *Id.* at 126. However, the Court pointed out that the holding does not limit states' regulatory rights with regard to liquor licenses. *Id.* at 122. In fact, the Court said that

states could legislatively ban all sales of alcohol in close proximity to churches, without violating the First Amendment. *Id.* at 123-124 (*See also California v. LaRue*, 409 U.S. at 119-120 (Stewart, J., concurring) (although the First Amendment prohibits states from interfering with freedom of the press or free exercise of religion, the Twenty-first Amendment empowers a State to prohibit alcohol from being sold in bookstores or within two hundred (200) feet of a church)). This Court has upheld states' exercise of their Twenty-first Amendment power to regulate the sale of alcohol, even where such regulations interfere with First Amendment freedoms.

In the instant case, the State of Utah has valid power under the Twenty-first Amendment to condition the granting of Petitioner's liquor license upon Petitioner's willingness to waive certain First Amendment freedoms and to uphold Utah State law. Like California in *LaRue* and New York in *Bellanca*, the State of Utah has not placed any direct restrictions on any rights protected by the First Amendment. Petitioner may discriminate against women if it relinquishes its liquor license, which it is free to do. Further, this Court's reasoning in *LaRue* compels a presumption of the validity of the State of Utah requirement that establishments selling liquor shall not violate the Utah Civil Rights Act. This Court has firmly established that a state may impinge upon First Amendment rights when regulating circumstances surrounding the sale and consumption of alcohol.

IV. THE FIRST AMENDMENT GUARANTEES OF FREEDOM OF ASSOCIATION DO NOT PROHIBIT APPLICATION OF THE UTAH CIVIL RIGHTS ACT TO THE ELKS LODGE.

This Court has established that First Amendment protection of freedom of association extends only to truly private clubs. Petitioner is not a truly private club. Petitioner maintains a public and commercial profile, profiting from the state licensed sale of beer and liquor and from the rental of its facilities to the public. Because Petitioner itself sought state regulation, it cannot simultaneously claim immunity from state anti-discrimination supervision.[7]

Petitioner is not entitled to First Amendment protection because it is not a small, selective organization. This Court has consistently held that the essence of privacy is selectivity. *Tillman v. Wheaton-Haven Recreation Association*, 410 U.S. 431, 438 (1973); *Sullivan v. Little Hunting Park*, 396 U.S. 229, 236 (1969).

This Court refused to extend constitutional protection to association among members of the Rotary Club and the Jaycees, two (2) private organizations similar to Petitioner's club, because these groups lacked intimacy sufficient to provide them the privacy protection afforded

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[7] If, as now claimed by Petitioner, the central activity of the Petitioner's lodge is the ritualistic Tuesday night meeting, during which no alcohol is served or present, (Petitioner's Brief, p. 6; p. 51), the relinquishment of its state issued private liquor club license would not affect the functioning and central purpose of Petitioner.

to family-like relationships. *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). If there is little or no selectivity in a club's membership, there is no basis to claim privacy. *Bd. of Directors of Rotary International v. Rotary Club*, 481 U.S. 537 (1987); *Roberts*, 468 U.S. 609. Like the Petitioner in the instant case, both the Rotary Club and Jaycees organization founded their First Amendment claims on assertions that they maintained selective membership criteria. This Court has already twice rejected this argument.

The Elks is an organization with a large membership and without a genuinely selective membership procedure. The St. George Elks Lodge is not a truly private club. Although Petitioner lists ten (10) characteristics as its membership standards (Petitioner's Brief pp. 10-11), these criteria do not create a selective, intimate organization. Most,[8] if not all, men who apply are allowed to join the Elks. At various Lodge meetings, Elks members are encouraged to recruit new members. *Id.* at A-3. Although the Elks can have members only from Washington County, Utah and small adjoining areas of Nevada and Arizona, the lodge enjoys a large membership of one

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[8] Three (3) long time members of the St. George Elks testified that during their respective thirty-one (31), thirty-eight (38), and twenty-nine (29) years of membership, they witnessed respectively, the rejection of no applications, maybe ten (10) applications, and one (1) application for membership.

From January, 1987 through June, 1989, the St. George Elks members approved every application for membership presented to them (except Respondent's). During those two and one-half years, the investigation committee, whose duty is to review the qualifications of all applicants, never issued a negative report on any applicant. Petitioner's Brief, p. A-3.

thousand fifty-six (1,056) men. This figure represents more than 5% of the male population in Washington County, Utah and more than 8% of the male population in the City of St. George.[9] There is no limit on the number of men that can be members of the Elks. *Id.*

Because Petitioner has not conducted itself as a truly private club, it cannot claim First Amendment immunity from the reach of the Utah Civil Rights Act. Rather than maintaining selective membership standards, Petitioner has solicited and encouraged a large membership and has admitted virtually every male that has wished to join. By offering its facilities for rent and by running a restaurant in which non-member guests can purchase food and alcohol, Petitioner has lost any basis for a claim of protected privacy. Finally, Petitioner has accepted a state license to sell beer and alcohol, voluntarily submitting to the government supervision which often befalls beneficiaries of state privileges. No truly private organization invites a state regulating body into its inner sanctum.[10] Contrary

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[9] The 1988 population of Washington County, Utah was 38,600 and that of the City of St. George, Utah was 25,000. Respondent assumes that one/half of these county and city residents were male. The actual percentage of the eligible general population which are members of the Elks is substantially more than 5% and 8% in light of that fact that not all male residents are over the age of twenty-one, which is one of the requirements for membership in a private liquor club in Utah. An organization that includes as its members more than ten percent (10%) of the eligible males within its municipal location, seems difficult to describe as private, intimate and selective.

[10] As part of the application for its state liquor license, the Elks consented to permit any authorized representation of the liquor commission or any law enforcement officer the "unrestricted right

to Petitioner's argument, the Elks is not "an extension of one's home," because in Utah no one can sell beer or liquor in their home.[11]

CONCLUSION

This case does not present any important federal issues to be settled by this Court. This Court decided in prior cases that states may constitutionally limit First Amendment rights when eradicating gender discrimination. More importantly, the Twenty-first Amendment grants states broad regulatory powers with regard to alcohol. This Court established that Twenty-first Amendment regulatory powers include the power to infringe on Petitioner's First Amendment interests. Finally, Petitioner's associational interests are not of a type protected by the First Amendment.

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to enter the club premises." Ut. Code Ann. § 32A-5-102(1) (1953 as amended); Petitioner's Brief, p. A-100. Such a voluntary waiver of Fourth Amendment rights is no more onerous or unconstitutional, than the encroachment upon Petitioner's First Amendment associational rights occasioned by the Utah Civil Rights Act.

[11] Additionally, it would be a very busy home indeed that annually sold a quarter million dollars worth of liquor.

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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